

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC. and
SEABRIGHT, INC.,

Appellants,

v.

439

JOY R. SIMONSON, *et al.*,

Appellees.

No. 20,196

CARBER, INC.,

Appellant,

v.

JOY R. SIMONSON, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 26 1966

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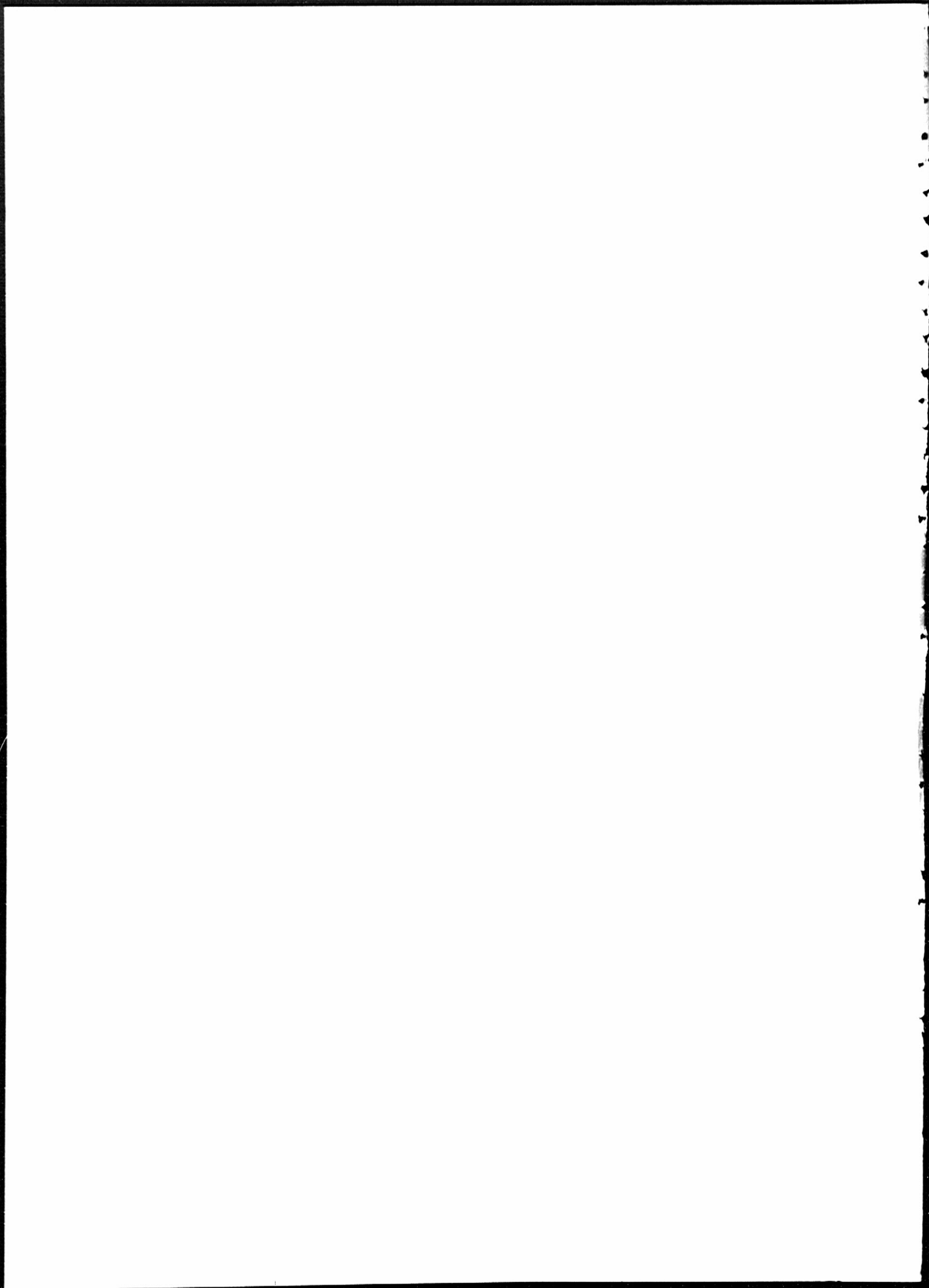
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JOINT APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KAYCEE, INCORPORATED
T/A Peppermint Lounge
3263 M Street, N. W.
Washington, D. C.

AND

SEABRIGHT, INCORPORATED
T/A Corral Cafe
3267 M Street, N. W.
Washington, D. C.

Plaintiff,

vs.

Civil Action No. 225-'66

Joy R. Simonson
James G. Tyson
J. Bernard Wyckoff

Individually and comprising
the membership of the
Alcoholic Beverage Control
Board

The District Building
14th and E Streets, N. W.
Washington, D. C.

Defendants.

RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
<u>1966</u>	
Jan. 28	Complaint, appearance, Exhibits 1, 2a, 2b, 3 thru 9 filed
Jan. 28	Summons, copies (3) * * *

DateProceedings1966

Jan. 28 Motion of Pltf. for Temporary Restraining Order. Filed

Jan. 28 Motion of Pltf. for Preliminary Injunction; P & A. Filed

Jan. 28 Temporary restraining order; fixing 2/7/66 for hearing on motion for preliminary injunction; undertaking \$500.00 Issued at 2:10 p.m. (N) All ser 2/1/66 Sirica, J.

Jan. 28 Injunction undertaking of pltf's in sum of \$500.00 with National Surety Corp., approved. Filed

Feb. 1 Motion of Citizen's Association of Georgetown to intervene as amicus curiae; c/m 2/1; deposit \$5.00 Filed

Feb. 3 Consent Order continuing temporary restraining order in effect and continuing hearing on motion for preliminary injunction to March 1, 1966 (N) Gasch, J.

Mar. 2 Notice by pltf's to take deposition of J. Bernard Wyckoff, Hon. Walter Tobriner, Capt. Peter Belin and Mrs. Polly Shackleton; c/m 3/2/66 Filed

Mar. 2 Consent order continuing hearing on motion for preliminary injunction to 3/29/66; defts' motion for summary judgment set for hearing on said date, provided service of said motion is effected in time to permit opposition thereto. (signed 3/1/66) (N) Gasch, J.

Mar. 4 Motion of defts to quash deposition and to bar discovery; c/m 3/3/66; P&A; M.C. 3/4/66 Filed

Mar. 7 Withdrawal of Motion of The Citizens Association of Georgetown to intervene amicus curiae. Filed

Mar. 7 Motion of The Citizens Association of Georgetown to intervene as party deft; P&A's; Exhibits (2); c/m 3/7/66. M.C. 3/7/66; Deposit \$5.00 by Niblack. * * *

Mar. 8 Motion of defts to quash notice to take deposition of Walter N. Tobriner; P&A; s; c/m 3/8/66. M.C. 3/8/66. Filed

Mar. 8 Order granting intervention of Citizens Association of Georgetown as party defendant. (N) Sirica, J.

Mar. 8 Answer of intervenor deft Citizens Association of Georgetown to complaint; c/m 3/7/66 Filed

Mar. 8 Motion of intervenor-deft. Citizens Association of Georgetown to quash deposition and to bar discovery; P&A's; c/m 3/7/66. M.C. 3/8/66 Filed

<u>Date</u>	<u>Proceedings</u>
<u>1966</u>	
Mar. 8	Opposition of pltfs to motions to quash deposition and to bar discovery; c/m 3/8/66; P&A Filed
Mar. 9	Motion of intervenor for summary judgment; c/m 2/9/66; MC 3/9/66 Filed
Mar. 9	Motion of defts for summary judgment; P&A; statement; exhibit A-1 (2 vols); certification of record; affidavit; exhibits A-2 thru A-12; c/m 2/9/66; MC 3/9/66 Filed
Mar. 9	Transcript of proceedings 3/1/66 pp. 1-7 *** Filed
Mar. 15	Memorandum of P&A of Citizens Association of Georgetown, intervenor, in support of motion for summary judgment; statement; c/m 3/14/66 Filed
Mar. 21	Answer of defts to complaint; * * * Filed
Mar. 21	Calendared (AC/N) (N)
Mar. 21	Opposition of pltfs to motion for summary judgment; c/m 3/21/66 Filed
Mar. 21	Memorandum of law of pltfs in support of motion for preliminary injunction and in opposition to motion of defts for summary judgment; c/m 3/21/66 Filed
March 22	Exhibit #1 to opposition of pltf to motion for summary judgment Filed
Mar. 22	Deposition of J. Bernard Wyckoff * * *
Mar. 24	Deposition of Capt Peter Belin Filed
Mar. 28	Reply of intervenor in opposition to pltfs' motion for preliminary injunction; memorandum of law; *** Filed
Mar. 29	Corrections to and clarification of deposition testimony of Capt. Peter Belin Filed
Apr. 5	Order granting motion of defts for summary judgment and dismissing complaint and motion of pltfs for preliminary injunction; enjoining defts until final decision made in USCA (N) Sirica, J.
Apr. 7	Order denying motion of deft. to quash deposition of J. Bernard Wyckoff and Peter Belin and to bar discovery from the same; granting motions of defts. to quash depositions of Walter Tobriner and Polly Shackleton and to bar discovery from said parties, without prejudice (N) Sirica, J.
Apr. 11	Notice of appeal by pltf from order of 4/5/66; *** Filed
May 3	Transcript of proceedings 3/4/66 pp 1-29 ***

[Filed January 28, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

KAYCEE, INCORPORATED
T/A Peppermint Lounge
3263 M Street, N.W.
Washington, D. C.

AND

SEABRIGHT, INCORPORATED
T/A Corral Cafe
3267 M Street, N.W.
Washington, D. C.

Plaintiff,

vs.

Civil Action No. 225-'66

Joy R. Simonson
James G. Tyson
J. Bernard Wyckoff

Individually and com-
prising the member-
ship of the Alcoholic
Beverage Control Board

The District Building
14th and E Streets, N.W.
Washington, D. C.

Defendants

COMPLAINT

(Temporary Restraining Order;
Preliminary Injunction; Mandatory Injunction)

1. The Plaintiffs, Kaycee, Inc. and Seabright, Inc., corporations incorporated in the District of Columbia, bring this suit in their respective corporate names; the defendants, Joy R. Simonson, J. Bernard Wyckoff and James G. Tyson, are sued individually and in their representative capacity as the Membership of the Alcoholic Beverage Control Board in and for the

District of Columbia; though named as a defendant it is noted that James G. Tyson dissented from the decisions of the majority of the Board denying re-issuance of Alcoholic Beverage Control licenses to the plaintiffs. Jurisdiction is vested in this Court because involved herein are property rights of each plaintiff in excess of TEN THOUSAND DOLLARS (\$10,000.00) and the action is equitable in nature.

2. Since January 11, 1963, the plaintiff Kaycee, Inc. has been continuously in possession of a Retailer's license Class "C", and since May 23, 1955, the plaintiff Seabright, Inc. has been continuously in possession of a Retailer's license Class "C", both of said licenses having been issued by and under the authority of the aforementioned Board, pursuant to the Act of Congress approved January 24, 1934, as amended (D.C. Code, Sec. 101 et seq Title 25). That each of said licenses has been renewed from year to year, the last of such renewals of each of said licenses being on February 1, 1965, which said licenses expire at midnight, January 31, 1966.

3. That the businesses of both of the corporate-plaintiffs, operated as restaurants in conjunction with Class "C" ABC licenses, are well and regularly patronized by the public; and that the plaintiff Kaycee, Inc. now grosses approximately \$80,000.00 p.a. and the plaintiff Seabright, Inc. now grosses approximately \$140,000.00 p.a.

4. On or about November 5, 1965, the plaintiffs applied for renewal of their Retailer's Licenses, Class "C" in the manner and form prescribed by law. A hearing on renewal of plaintiffs' licenses was scheduled before the Alcoholic Beverage Control Board for November 24, 1965 and continued by the Board to November 26, 1965. On or about November 19, 1965, a civic association, to wit: the Citizens Association of Georgetown, caused to be mailed to all the members of this association of Georgetown a special "News Extra" (copy attached and made a part hereof as Exhibit 1) condemning the businesses of the instant corporate-plaintiffs, describing them as "rotten apples", using inflammatory language urging the citizens to become active in the campaign against these two licensees. The said Citizens Association caused a copy of this "News Extra (Exhibit 1) to be sent by first class mail to Board member J. Bernard Wyckoff at his place of residence at 3328 O

Street, N.W., a short distance from plaintiffs' places of business. The said Citizens Association, up until the time the hearing commenced on November 26, 1965, through its President, repeated on radio, television, and in the press in the Washington area excerpts from the "News Extra" of November 19th including the "rotten apple" description.

5. On November 26, 1965, at the outset of the hearing on plaintiff's applications for licenses before the Alcoholic Beverage Control Board, plaintiffs urged on the Board concern that the renewal hearing be held before Board members who would in the instant cases possess the independent status, free from bias and conflict of interest, as would assure a fair hearing and due process to the applicants. Written Motion (copy attached and made a part hereof as Exhibit 2a) addressed to all members of the Board and was by the Board denied. Thereupon plaintiffs moved the Board for permission to present evidence bearing on the question of bias, conflict of interest and independent status of the Board members. Board denied plaintiffs' oral Motion to present such evidence. Plaintiffs then presented a second written Motion to the Board with attached supporting affidavit (copy attached and made a part hereof as Exhibit 2b). The basis for said Motion was that J. Bernard Wyckoff, one of the defendants herein, was, and had been during 1965 an active member of the Citizens Association of Georgetown, the protestant of record in the instant case; that during 1965 J. Bernard Wyckoff was Secretary of the said Association and was serving in the capacity as Secretary when he was appointed to the Alcoholic Beverage Control Board in August 1965 at a time when the said Citizens Association was continuing its campaign of opposition to M Street ABC licensees and their operations, including those of both corporate plaintiffs, as reported by the Evening Star on August 19, 1965 (copy attached and made a part hereof as Exhibit 3).

6. Also on August 19, 1965, J. Bernard Wyckoff was appointed as a member of the Alcoholic Beverage Control Board.

7 (a). That in January 1965 the said Citizens Association of Georgetown had been an official and active protestant to the application of Seabright, Inc., a plaintiff herein, for renewal of its Retailer's license Class "C". Ernest E. Byrd, who was the President and principal stockholder of plaintiff Seabright, Inc. at the time of the renewal hearing and protest in January 1965, was also a principal stockholder and officer of plaintiff Kaycee, Inc. at the time it filed application with the Board (November 5, 1965) for renewal of its license for the year beginning February 1, 1966. The defendant J. Bernard Wyckoff supported the efforts of the said Citizens Association in its protest of the renewal of the ABC license of Seabright, Inc., a plaintiff herein, in January 1965. After his appointment to the Alcoholic Beverage Control Board in August, 1965, defendant J. Bernard Wyckoff continued to receive communications from the said Citizens Association, complaining about the operation of M Street ABC licensees that permitted dancing. After the plaintiffs had filed for renewal of their ABC licenses on or about November 24, 1965, and prior to the time of the hearing on November 24, 1965, J. Bernard Wyckoff, defendant herein, continued to receive at his place of residence in Georgetown, ex parte communications from those opposed to said license "renewals" asking for his active support of their cause.

7 (b). At no time prior to the renewal hearing, nor during such hearing, for plaintiffs' licenses for 1966 did defendant J. Bernard Wyckoff put into the record or disclose the content of any such ex parte communications as he had received from those protesting renewals of plaintiffs' licenses. On November 29, 1965, at the conclusion of the case, plaintiffs herein submitted a Supplementary Affidavit relating to the qualifications of the defendant Wyckoff in the instant cases (copy of this Affidavit is attached and made a part hereof as Exhibit No. 4). Protestant Citizens Association of Georgetown, through its President, submitted during the hearing an Affidavit on the same subject (copy of which is attached and made a part hereof as Exhibit No. 5). On or about December 7, 1965, acting on its own initiative, the Alcoholic Beverage Control Board reopened the hearing to receive into the

record the counter-Affidavit of Board member J. Bernard Wyckoff on the question of conflict of interest and his qualifications (copy of which is attached and made a part hereof as Exhibit No. 6).

8. Many of the official communications protesting plaintiffs' license renewals for 1966 were received from persons who have been long-standing friends and immediate neighbors of said J. Bernard Wyckoff at and near his residence on O Street, N.W. In a supplemental Memorandum, Opinion and Order issued by the Board in the instant cases on January 24, 1966, the Board delineated a neighborhood under Section 14(a)5 of the Act and included within the boundaries of the delineated neighborhood and close to the center of it the place of residence (the 3300 block of O Street, N.W.) of Board Member J. Bernard Wyckoff. The majority of the Board on December 28, 1965 entered findings denying the renewal of plaintiffs' Retailer's Class "C" licenses based upon "opposition of the persons residing or owning property in the neighborhood. . .". That, therefore as a matter of law, the said J. Bernard Wyckoff could not bring the required objectivity to bear on plaintiffs' applications and could not demonstrate the independent status requisite for the plaintiffs to be accorded due process of law in the hearing before the Board and that he must disqualify himself and be removed from participating in the hearing and deliberations on plaintiffs' applications.

9. That the failure of defendant Wyckoff to remove himself from participation in the hearing and the failure of the Board to remove him resulted in Board member Wyckoff influencing rulings of the Board on questions of evidence, particularly uncorroborated hearsay, over objections of the corporate plaintiffs herein as well as influencing the majority of the Board in reaching its findings of fact and conclusions of law, and by casting the deciding vote in these cases, all to the injury and detriment of the applications who were thereby denied a fair hearing and due process.

10. On November 26, 1965 following disposition by the Board of Motions bearing on the qualification of defendant J. Bernard Wyckoff, pursuant to plaintiffs' applications and in accord with the Alcoholic Beverage Control

Act and the rules and regulations promulgated pursuant thereto, a joint protest hearing was conducted at which the following facts were elicited:

(a) That in January 1965 the Board unanimously approved and issued to the corporate-plaintiffs herein Retailer's Class "C" ABC licenses for premises 3263 and 3267 M Street, N. W. respectively, said licenses covering the period February 1, 1965 through midnight of January 31, 1966.

(b) That during the license year beginning February 1, 1965 to the date of the hearing, no officer or stockholder of either of plaintiff corporations was arrested; and that during the same period, as indicated in the minority opinion, (copy of which is attached and made a part hereof and is Exhibit No. 7) neither of the plaintiff corporations was involved in any infractions of the ABC Act or regulations except credit transactions of Seabright, Inc. and except a citation against Kaycee, Inc., which after open hearing was by the Board dismissed;

(c) That since issuing originally Retailer's Class "C" ABC licenses to the plaintiff-corporations, the Alcoholic Beverage Control Board has continued its policy of issuing new and original licenses each year within the neighborhood of plaintiff's licensed premises and that several such new licenses after original application have been issued by the Board in the 3200 block and 3300 block of M Street, N. W. since plaintiffs' original applications were by the Board granted.

11. The hearing itself witnessed the testimony of six persons protesting the renewal of plaintiffs' licenses. On information and belief most of these protesting witnesses are members of the Citizens Association of Georgetown and at least three of them are long-standing personal acquaintances of J. Bernard Wyckoff. Testimony of the said witnesses alluded to instances of misconduct and parking violations which have allegedly occurred in the neighborhood of their homes. Their testimony also covered noise emanating from the restaurants of the corporate-plaintiffs as heard by witnesses standing in the commercial area of M

Street in front of the restaurants. There was also testimony by a protesting witness of a fight which he had observed out in the street on M Street in the general vicinity of the corporate-plaintiffs' restaurants. Also it should be noted that the immediate neighborhood of the plaintiffs' restaurants is commercially zoned by the official records of the District of Columbia.

12. No substantial evidence or probative testimony was elicited to demonstrate any connection between the alleged acts of misconduct and criminality and the plaintiffs' restaurants. In two or three incidents protestant witness testified that he heard a misbehaving person state to someone else that he had been at the Corral (operated by the plaintiff Seabright, Inc.). It should be noted that no substantial or convincing evidence was offered to corroborate such hearsay. No testimony, either of a direct nature, or in the nature of hearsay, was elicited to demonstrate any connection between the alleged acts of misconduct, criminality and parking violations as were or could have been under the control of corporate-plaintiffs and the restaurants of the corporate-plaintiffs.

13. No witness who appeared on behalf of the protestants or the applicants gave any testimony as to any disorderly or any unlawful act having taken place in either of the restaurants operated by the corporate-plaintiffs during the license year beginning February 1, 1965.

14. Though there was testimony about people congregating on the sidewalk to look in at the dancers and the band at plaintiffs' restaurants, the testimony also disclosed that on request from No. 7 Police Precinct, both restaurants caused such windows to be painted so as to prevent the curious from seeing in.

15. No testimony indicated that the owners, management, operators, or employees of the restaurants of either corporate-plaintiffs were identified with parking violations.

16. There was no evidence presented at the hearing that any charges were placed against the instant plaintiffs for noise in violation of police regulations. There was no testimony from any person that he was, by

noise emanating from the restaurants, disturbed in the enjoyment and quiet of his place of residence. The sole testimony on noise emanating from the restaurants in question was based on the observation of persons standing on M Street in front of the restaurants in a commercial and heavily trafficked zone. Plaintiffs offered testimony of sound-proofing undertaken in the rear of the restaurant premises during the past year.

17. While the hearing produced no testimony that either of plaintiffs' restaurants had been operated in a disorderly or ill-supervised fashion, the testimony of the Commanding Officer of the 7th Precinct with respect to both plaintiffs in the operation of their businesses for which license renewals are being sought was that they were operated in an orderly fashion, that they have been very cooperative and that they always done whatever the Precinct has asked them to do. The only Alcoholic Beverage Control Inspector who testified in the case (it was stipulated that reports of other Inspectors would be made part of the record) corroborated the Precinct Commander's testimony that the licensed establishments in question were very orderly, under proper supervision with particular attention being given to checking ages of those being admitted. Inspection reports of numerous Alcoholic Beverage Control Inspectors make the record clear and uncontradicted that the establishments in question were operated in an orderly fashion, properly supervised, and with due care being given to the checking of ages. Several persons who had patronized the establishments of the plaintiffs testified as to the nature of the operation, the type of food and music, the orderliness of the patrons, and the desirability and appropriateness of both of said restaurant establishments. Protestants presented no probative testimony contradicting or contravening such evidence though some protestants complained of noise they heard emanating from plaintiffs' restaurants while said witnesses were standing in front of said restaurants in the commercially zoned and heavily trafficked M Street corridor.

18. Approximately 185 telegrams were received supporting the renewal of plaintiffs' licenses were properly received by the Board from persons at various addresses, the vast majority of which were from the

area known as Georgetown. The cumulative effect of this testimony was that the plaintiffs' restaurants, conclusively, met all the criteria of the Alcoholic Beverage Control Act for renewal of Retailer's Class "C" licenses.

19. Upon conclusion of said hearing, faced with a record that reflected no disability, the defendants herein had no other choice but to renew the plaintiffs' licenses.

20. The majority of the defendants in spite of the fact that the administrative hearing thereon provided no legal or factual basis, acted to refuse the plaintiffs the renewal of their Retailer's licenses Class "C". That such action was arbitrary, capricious, unreasonable, and in violation of the plaintiffs' constitutional right of due process.

21. That the action of the Alcoholic Beverage Control Board, defendants herein, in refusing to disqualify J. Bernard Wyckoff (for reasons hereinabove set forth) was a shocking abuse of the administrative process which is rectifiable only upon judicial review.

22. Upon receipt of the decision of the majority of the Board issued December 28, 1965 denying renewals of the said licenses of the plaintiffs, plaintiffs, in writing, requested of the Board a copy of the transcript of the said hearing so that they might exhaust their administrative remedies and/or take further legal action. Following receipt of the assembled transcript of the hearing, plaintiffs filed with the Board Motion for additional findings and for changes in the findings and for reconsideration (copy of which is attached and made a part hereof as Exhibit No. 8). On January 24, 1966 the Alcoholic Beverage Control Board in response to the aforesaid Motion of plaintiffs issued a Supplemental Memorandum, Opinion, and Order (copy of which is attached and made a part hereof as Exhibit No. 9). Therein the Board entered new findings that plaintiffs' establishments were located in C-2 (commercial) zoning and that 186 (rather than 176 as entered in the previous findings of the Board) sent telegrams were timely received by the Board in support of plaintiffs' renewal applications. The Board also corrected its earlier findings by

eliminating its earlier observation that the majority of the addresses from which consent telegrams came were outside Georgetown. In its Memorandum of January 24, 1966, the Board for the first time in its consideration of license renewal applications of the instant plaintiffs defined and delineated the "neighborhood" as referred to in Section 14(a)5 in the Act. All other requests for additional findings and for changes in findings as made in the Motion of the plaintiffs herein were by the Board denied, as was plaintiffs' Motion for reconsideration. Thereupon the plaintiffs have exhausted their administrative remedies and their remedies with the exception of the equitable remedies prayed herein, and, any legal remedies which might be available are inadequate.

23. The business establishment of the Plaintiff Kaycee, Inc. has operated at its present location with a Retailer's License, Class "C" continuously since January 1, 1963 and that of the plaintiff Seabright, Inc. at its present location with a Retailer's License Class "C" continuously since May 23, 1955. If the Court does not act, plaintiffs will not have such beverage licenses and will be unable to operate their restaurants successfully as such licenses are essential to the financial survival of the Plaintiffs. The Plaintiffs have no adequate remedy at law.

24. For the reasons hereinabove set forth, if the plaintiffs are required to surrender their Retailer's Licenses, Class "C" at or before midnight, on or before January 31, 1966, and if the defendants refuse to reissue, at or before midnight, on or before January 31, 1966, Retailer's Licenses Class "C", the plaintiffs will suffer irreparable damage, loss, and injury.

WHEREFORE, THE PREMISES CONSIDERED, PLAINTIFFS PRAY:

1. That all necessary process issue herein.
2. That plaintiffs' cause be advanced for early trial.
3. That defendants, their agents, servants, employees, and attorneys, be temporarily restrained without notice, from effecting their orders dated December 28, 1965, denying renewal of plaintiffs' Retailer's Licenses, Class "C".

4. That the defendants be ordered by the Court to issue to the plaintiffs, subject to disposition of this case by the Court on its merits, Retailer's Licenses, Class "C" for the period commencing February 1, 1966, or in the alternative,

that the defendants, their agents, servants, employees, and attorneys, be preliminarily enjoined from effecting their orders dated December 28, 1965, denying the renewals of plaintiffs' Retailer's Licenses, Class "C", pending hearing on the merits.

5. That the defendants, their agents, servants, employees, and attorneys, and all persons, natural corporate or body politic, be enjoined from in any manner interfering with the plaintiffs' lawful conduct of their businesses, pending hearing on the merits.
6. That on final hearing on the merits, the defendants be ordered to issue Retailer's Licenses, Class "C", to the plaintiffs; or, alternatively, an administrative hearing be ordered wherein said J. Bernard Wyckoff be disqualified from participation therein, and that said hearing be before a Board to be constituted as this Court may direct with qualifications so as to accord plaintiffs herein a fair and impartial hearing, and pending said rehearing, the defendants be ordered to issue Retailer's Licenses, Class "C" to the plaintiffs, and furtherpending said rehearing, that the defendants, their agents, servants, employees, and attorneys, and all persons, natural, corporate or body politic, be enjoined from in any manner interfering with the plaintiffs' lawful conduct of their businesses.

/s/ Phyllis ben Kahla
President, Kaycee, Inc.

/s/ Ernest E. Byrd
President, Seabright, Inc.

[Certificate of Service]

[Jurat]

EXHIBIT NO. 1
[Attached to Complaint]

NEWS

EXTRA

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

November 19, 1965

THE M STREET TAVERN STRIP
AND CRIME PREVENTION THROUGHOUT ALL OF GEORGETOWN

We're going to campaign against two of the worst offenders in the M Street tavern "strip" and we need your help!!

Because of announcement of this campaign at our monthly meeting November 8, owners of the Corral and the Peppermint Lounge decided to give us as little time as possible. On November 10 they posted notice that on the DAY BEFORE THANKSGIVING - November 24 - they will go before the Alcoholic Beverage Control Board (ABC) to request renewal of their Class "C" liquor licenses.

It is the opinion of our Committee on Licenses that the Corral, 3267 M Street, and the Peppermint Lounge, 3263 M Street, are two of the worst offenders of public order now operating on the so-called tavern "strip" in Georgetown's M Street area. They draw rowdy teen-agers, and other undesirable elements which cause disorder, nuisances, vandalism and other crimes throughout this Historic District. This puts undue burdens on Police Precinct No. 7's understaffed force, thereby robbing the rest of Georgetown of adequate police protection.

We mean to demonstrate this to the ABC Board on the 24th with your help!

COME AND SUPPORT US. . . .

. . . at the November 24 hearing. It opens at 10:00 A.M. before the ABC Board in room 201, District Building, 14th and E Streets, N. W. Meanwhile, immediately indicate your opposition to liquor license renewals at 3267 M Street (The Corral, Case No. 7212) and at 3263 M Street (the Peppermint Lounge, Case No. 8810). To do this write - or better - send a wire TODAY to:

Chairman, ABC Board
District Building, 14th and E Streets, N. W.
Washington, D. C., 20004

The Association knows of no greater threat to in-city family residents and to the security of person and property in Georgetown than the few rotten apples in the barrel of otherwise reputable licensed restaurants.

EXHIBIT 2a
[Attached to Complaint]

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE DISTRICT OF COLUMBIA

Protest Hearing on Applications of
Seabright, Inc. and Kaycee, Inc.

MOTION

WHEREAS application of Seabright, Inc. for license renewal for retailer's Class C license at 3267 M Street, N. W. for year commencing February 1, 1965 was opposed and formally protested in 1965 at a time when Ernest E. Byrd was a principal officer and stockholder of Seabright, Inc.; and

WHEREAS Ernest E. Byrd is now a principal officer and stockholder of Kaycee, Inc. as well as in Seabright, Inc., applicants for renewal of Class C licenses at 3263 and 3267 M Streets, N. W. respectively, in instant Hearing;

If any member of this Board participated, directly or indirectly, in such opposition or in recommending or approving such opposition,

It is, in the interest of fair play, respectfully requested and moved that any such member refrain from participating in this ^{Protest} ~~xxxxxx~~ Hearing against ^{these applicants} ~~these applicants~~ and in meeting and deliberating on these applications with other members of the Alcoholic Beverage Control Board.

KAYCEE, INC. and
SEABRIGHT, INC.

By: /s/ James F. O'Donnell
Attorney

EXHIBIT 2b
[Attached to Complaint]

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE DISTRICT OF COLUMBIA

Protest Hearing on Applications
of Seabright, Inc. and Kaycee, Inc.,
Applications Nos. 7212 and 8810.

MOTION
AND
SUPPORTING AFFIDAVIT

Comes now applicants in the above-entitled cases by and through their attorney James F. O'Donnell and respectfully moves that J. Bernard Wyckoff remove himself from participating in these proceedings and from deliberations and meetings leading to findings and decisions in connection with the same for reasons that applicants believe there to be a genuine conflict of interest and matters of bias depriving said Board member of the independent status requisite for applicants to be accorded due process of law in the instant hearing(s) on applications for "renewal" of Retailer's Class C licenses, which applications are now being protested.

Respectfully submitted,

James F. O'Donnell
Attorney for above-entitled
applicants

SUPPORTING AFFIDAVIT

DISTRICT OF COLUMBIA, SS:

Your affiant, James F. O'Donnell, being first duly sworn on oath in accord with law makes this affidavit in support of the foregoing motion and verily states:

1. That in January 1965 the Citizens Association of Georgetown entered formal and active protest to the then pending application of Seabright, Inc. for Retailer's Class C license at 3267 M Street, N. W. at a time when Ernest E. Byrd was a principal stockholder and officer of said corporation, the Citizens Association then representing to the ABC Board on sworn testimony that the protest was made pursuant to official action of the Association in keeping with its By-Laws.

2. That it is the information and belief of your affiant based upon articles appearing in the press of Washington, D. C. that at the time of the aforesaid action in protesting said applications by the said Citizens Association of Georgetown, the aforesaid J. Bernard Wyckoff gave his support to such action.

3. That it is the information and belief of your affiant based upon articles appearing in the press of Washington, D. C. that at the time of the aforesaid action the aforesaid J. Bernard Wyckoff was in fact the duly elected official Secretary of the said Citizens Association in an active capacity, and remained so for many months subsequent thereto in 1965, and was in that capacity when appointed to the Alcoholic Beverage Control Board for the District of Columbia on or about August 19, 1965, and that his successor in this post was not appointed until the Association meeting subsequent to September 1, 1965; and that the said J. Bernard Wyckoff continues to receive from the Association written communications and other information on Association policies, including the Association's opposition to the instant applications, all of which are in the nature of ex parte communications from a party in interest in the matter now before the Board involving the financial security of the families of officers, stockholders, directors, and employees of the said applicants.

4. That numerous official communications of protest have been received in this case from persons who are long standing friends and immediate neighbors of the said J. Bernard Wyckoff at his place of

residence on O Street, N. W., Washington, D. C.

James F. O'Donnell

Subscribed and sworn to before me this _____ day of November,
1965.

Notary Public, D. C.

EXHIBIT 3
[Attached to Complaint]

EXHIBIT A. 5

THE EVENING STAR
Washington, D. C., Thursday, August 19, 1965

C-7

Duncan Aid Is Asked On M Street's Bars

A delegation from the Georgetown Citizens Association yesterday asked District Commissioner John B. Duncan yesterday to help do something about the strip of restaurant-bars along M Street.

led by retired Navy Capt. Peter Belin, president, the

About 100 children were eating lunches at the time in a room surrounded by art and craft work they had done.

group asked as an immediate measure a stepped-up inspection by the Alcoholic Beverage Control board of the establishments and stricter police enforcement.

"The M Street situation has taken a vast turn for the worse these last six months and we feel we must do everything we can to ameliorate it," Belin said.

The five delegates asked Duncan to support a congressional bill that would raise the

legal drinking age to 21 and to amend ABC board regulations to require a stricter inquiry into what kind of operation is planned when licenses are requested.

"We are finding an applicant will try to get before the board the picture of a high class operation. What we later find is beer drinking and entertainment," Belin charged.

Georgetown citizens have been complaining for several months that visitors to the M Street strip are raucous, uncontrollable and cause property damage. There are roughly 25 restaurant-bars on M Street in a six block area between 22th Street and 34th Street NW.

EXHIBIT 4
[Attached to Complaint]

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE DISTRICT OF COLUMBIA

Protest Hearing on Applications
of Seabright, Inc. and Kaycee, Inc.
Applications Nos. 7212 and 8810.

SUPPLEMENTAL SUPPORTING AFFIDAVIT

The affidavit of James F. O'Donnell filed pursuant to leave of the Alcoholic Beverage Control Board, supplementing Supporting Affidavit to Motion filed on November 26, 1965, is as following:

District of Columbia, SS:

James F. O'Donnell, being first duly sworn, deposes and says:

That J. Bernard Wyckoff is on record as having indicated his support in supporting formal opposition by the Citizens Association of Georgetown to the applications for renewal of Seabright, Inc. for premises 3267 M Street, N. W., Washington, D. C. in January 1965, which Citizens Association opposition has continued to this date. Such support was indicated by Mr. J. Bernard Wyckoff in the direct quotation of him appearing in the Washington Post on August 20, 1965 at page B-2 and reading as follows:

"I have voted along with the Association in any position it has taken, but I don't think that has any relationship to what I would be doing as a Board member."

The same article in the Washington Post referring to Mr. Wyckoff stated: (quoting the language of the Washington Post)

"He has lived in Georgetown since 1922, is a member of the Citizens Association of Georgetown and is a vocal opponent of numerous liquor license applications in the M Street area."

That in his testimony before this Board on November 26, 1965 the President of the Citizens Association of Georgetown stated that a Bulletin

and News Flyer describing the instant applicants as "rotten apples" was mailed to members of the Citizens Association only on or about November 18 or 19, 1965; and that attached hereto is a photostat of said Bulletin, a copy of which was by the Citizens Association of Georgetown mailed to J. Bernard Wyckoff on or about November 18 or 19, 1965 at his place of residence, as a person being asked to support the action of the Citizens Association as set forth in said Bulletin, a copy of which is attached hereto and made a part hereof as Exhibit A.

That there is no indication in the affidavit of Captain Peter Belin USN (Ret.) as to the date, if any, upon which said J. Bernard Wyckoff may have resigned from the Citizens Association of Georgetown and from any offices held therein.

/s/ James F. O'Donnell

Subscribed and sworn to before me this 29th day of November, 1965.

NOTARY PUBLIC

News
EXTRA

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

November 19, 1965

THE M STREET TAVERN STRIP
AND CRIME PREVENTION THROUGHOUT ALL OF GEORGETOWN

We're going to campaign against two of the worst offenders in the M Street tavern "strip" and we need your help!!

Because of announcement of this campaign at our monthly meeting November 8, owners of the Corral and the Peppermint Lounge decided to give us as little time as possible. On November 10 they posted notice that on the DAY BEFORE THANKSGIVING - November 24 - they will go before the Alcoholic Beverage Control Board (ABC) to request renewal of their Class "C" liquor licenses.

It is the opinion of our Committee on Licenses that the Corral, 3267 M Street, and the Peppermint Lounge, 3263 M Street, are two of the worst offenders of public order now operating on the so-called tavern "strip" in Georgetown's M Street area. They draw rowdy teen-agers, and other

undesirable elements which cause disorder, nuisances, vandalism and other crimes throughout this Historic District. This puts undue burdens on Police Precinct No. 7's understaffed force, thereby robbing the rest of Georgetown of adequate police protection.

We mean to demonstrate this to the ABC Board on the 24th with your help!

COME AND SUPPORT US

. . . at the November 24 hearing. It opens at 10:00 A.M. before the ABC Board in room 201, District Building, 14th and E Streets, N.W. Meanwhile, immediately indicate your opposition to liquor license renewals at 3267 M Street (The Corral, Case No. 7212) and at 3263 M Street (the Peppermint Lounge, Case No. 8810). To do this write — or better — send a wire TODAY to:

Chairman, ABC Board
District Building, 14th and E Streets, N.W.
Washington, D.C., 20004

The Association knows of no greater threat to in-city family residents and to the security of person and property in Georgetown than the few rotten apples in the barrel of otherwise reputable licensed restaurants.

EXHIBIT 5

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE DISTRICT OF COLUMBIA

The affidavit of Captain Peter Belin USN (Ret.), filed pursuant to leave of the Alcoholic Beverage Control Board in the Protest Hearing on applications of Seabright, Inc., and Kaycee, Inc., applications Nos. 7212 and 8810.

Washington, D. C., ss:

Captain Peter Belin, being first duly sworn, deposes and says:

That on Monday, 8 November, 1965, the date of the full meeting of the membership of the Citizens Association of Georgetown at which the resolution of the Citizens Association of Georgetown to oppose renewal of the liquor licenses of Kaycee, Inc., and Seabright, Inc., was adopted, Mr. J. Bernard Wyckoff was a member of the Alcoholic Beverage Control

Board and was not an officer or chairman of any committee of the Citizens Association of Georgetown.

That J. Bernard Wyckoff did not become Secretary of the Citizens Association of Georgetown until Monday, 10 May 1965, and prior to that time was Chairman of the Parks Committee of the Citizens Association of Georgetown, and that the function of the Parks Committee relates in no way to the subject of alcoholic beverages, which is within the purview of the Licensing Committee, of which committee Mr. Wyckoff has never been a member or chairman.

/s/ Peter Belin USN (Ret.)

Subscribed and sworn to before me this 26th day of November,
1965.

NOTARY PUBLIC

EXHIBIT 6

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

In Re: Applications of Seabright,
Inc. and Kaycee, Inc., for
Class C Retail Liquor
License. Applications Nos.
7212 and 8810.

AFFIDAVIT OF J. BERNARD WYCKOFF

I, J. Bernard Wyckoff, being first duly sworn on oath, depose and say, that I am a member of the Alcoholic Beverage Control Board in the District of Columbia, having been appointed to that position by the Board of Commissioners of the District of Columbia on August 20, 1965.

I have been a resident of Georgetown since 1922 and a member of a citizens' association during that time. I joined the Citizen's Association

of Georgetown several years ago. I have, prior to my appointment as Board Member, been chairman of the Parks Committee within the Association and was elected on May 10, 1965, to the office of secretary in the same Association. Upon receiving the appointment as member of this Board I immediately resigned from those offices. Since becoming a member of this Board I have resigned active membership in the Association and no longer attend Association meetings. I am, however, on the mailing list of the Association and receive all correspondence mailed to the membership at large.

With respect to the instant applications I have no independent recollection of ever having taken part in the Association's opposition to prior applications filed on behalf of the licensed premises, though I may have been present at times when such matters were discussed by the Association at their meetings in 1964 or 1965. I have no recollection of any discussions of these licensed establishments which may have taken place at the meetings of the Association. I do not know the individuals associated with the applications and did not know until the instant applications were before this Board that Ernest E. Byrd was a principal stockholder and officer of Seabright, Inc., which holds a retailer's class c license at 3267 M Street, N. W., and who is now principal officer and stockholder in Kaycee, Inc., an applicant herein.

On August 20, 1965, the Washington Post published an article concerning my appointment to the Board wherein it was stated that I was a vocal opponent of numerous liquor license applications in the M Street area. That statement was corrected in the same newspaper on August 21, 1965, wherein it was pointed out that I was a member of an Association "which is a vocal opponent of said applications." These newspaper articles are attached hereto as Exhibits 1 and 2 respectively. Attached hereto also is an article which appeared in the Washington Post on August 26, 1965, (Exhibit 3), wherein it is pointed out that I had given up active membership in the Association.

I have formed no bias concerning the instant applications for any reason whatsoever and state that I will decide the merits of these applications upon the facts presented to the Board which are contained in the administrative record and upon the prevailing law.

/s/ J. Bernard Wyckoff
J. BERNARD WYCKOFF
Member, Alcoholic Beverage
Control Board

Subscribed and sworn to before me this 7 day of December,
1965.

/s/ Mae C. Jackson
Notary Public, D. C.

My commission expires:

My Commission Expires June 14, 1968

Retired Businessman Gets ABC Board Job

J. Bernard Wyckoff, a year job over 22 other candidates. Democrat, Georgetown resident and retired businessman, was appointed yesterday to the District Alcoholic Beverage Control Board.

The appointment to the vacancy created by the resignation last month of Louis N. Nichols was announced by Commissioner John B. Duncan after approval by the full Board of Commissioners. He was chosen for the \$16,460 a

Wyckoff, a 77-year-old retired marketing consultant, was one of three nominees of the District Democratic Central Committee. He will serve a four-year term.

He has lived in Georgetown since 1922, is a member of the Citizens Association of Georgetown and is a vocal opponent of numerous liquor license applications in the M Street area.

Of his Georgetown ties, Wyckoff said, "My interest has always been pretty wide and will continue to be.

I have voted along with the Association in any position it has taken, but I don't think that has any relationship to what I would be doing as a Board member."

He said he could not recall participating in any votes in which the Association was deciding whether to oppose applications for liquor licenses in Georgetown.

Wyckoff said he had not sought the job and knew nothing about it until a member of the Central Committee telephoned him in New Hampshire to ask if he would be a nominee.

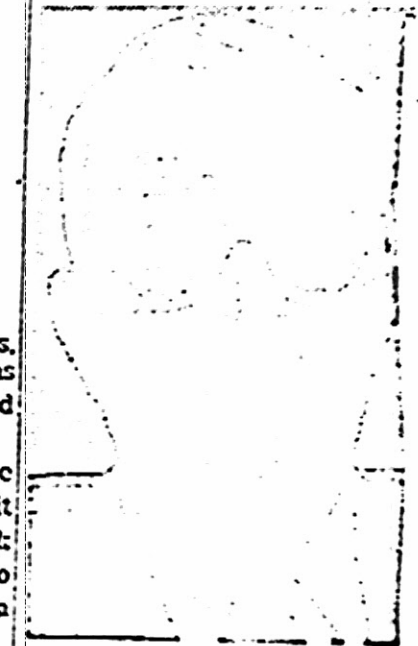
"I have a lot to learn," said Wyckoff, who added he had no experience with liquor control activities. "I look forward to it with great interest."

Attention has been focused on the Board in recent weeks because of recent hearings at which it was testified a Board member and a liquor inspector had been seen in licensed Georgetown establishments after hours.

Nichols resigned for personal and health reasons in the wake of police reports that he was seen in Clydes, 3236 M st. nw., after the legal closing time.

Wyckoff has prior Government experience, serving with the Office of Defense Mobilization from 1953 to 1959, with the Agriculture Department and with the Marshal Plan in Greece.

Recently he worked for Porter International Company as



The Washington Post
J. BERNARD WYCKOFF
... board appointee

a consultant in international business affairs.

He lives with his wife, Gertrude, at 3328 O st. nw. They have two sons and eight grandchildren.

How ABC Appointee's Status Eyed

Two legal problems arose yesterday in connection with the appointment Thursday of J. Bernard Wychoff to the District Alcohol Beverage Control Board.

First, it appeared the new member should have been named to an unexpired term that ends Feb. 2, 1960, instead of to a full four-year term as was announced. Commissioner John D. Duncan corrected the mistake yesterday when he swore Wychoff into office for the unexpired portion.

The second problem results from Wychoff's membership in the Citizens Association of Georgetown, which has filed suit in District Court over the recent granting of a liquor license to the Shark Pitt Restaurant at 3333 M st. in Georgetown.

If Wychoff's name were added to those of the other two Board members as defendants in the case, a conflict might arise, legal officials fear.

Wychoff said he hoped his name would not appear in connection with the suit, but added the decision was up to the Corporation Counsel's office. The Association contends that granting of the license was "capricious and arbitrary."

Applications for licenses in the Georgetown area have been one of the ABC Board's thorniest problems, and the association of which Wychoff is a member has been a vigorous opponent of many of the permits issued.

1. The day after the 1959
2. The day after the 1959
3. The day after the 1959
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5. The day after the 1959
6. The day after the 1959
7. The day after the 1959
8. The day after the 1959
9. The day after the 1959
10. The day after the 1959

1. Wychoff was appointed to
2. fill the vacancy caused by the
3. resignation of Louis N. Nich-
4. ols last month.

2. Due to an error in yester-
3. day's editions of The Wash-
4. ington Post, Wychoff's position
5. on Georgetown liquor appli-
6. cations was misrepresented. The
7. article said he was a member
8. of the Citizens Association of
9. Georgetown and in a vocal op-
10. ponent of numerous liquor li-
11. cense applications in the M
12. A. 1 area. It was intended
13. to read "which is a vocal op-
14. ponent."

EXHIBIT 2

Exhibit 3
[Attached to Exhibit 6]

Interest Conflict

J. Bernard Wyckoff newly appointed member of the District's Alcoholic Beverage Control Board, said yesterday he had given up his active membership in the Citizens Association of Georgetown. He wasn't resigning from the Association, Wyckoff said, but he felt he no longer should attend meetings of the group which has voiced objections to applications for liquor licenses in the Georgetown area. "There's a very tenuous conflict of interest," he explained.

EXHIBIT 7
[Same opinion in KAYCEE, INC.
t/a Peppermint Lounge]

IN RE: Seabright, Inc.
t/a Corral Cafe

- 8 -

MINORITY OPINION

I do not agree with either the Finding of the Majority of the Board under Section 14(a)5 of the Act or the conclusion presumably based on said Finding.

The record on file with the Alcoholic Beverage Control Board concerning 3267 M Street, N. W., does not show this license has been involved in any infractions of the Act or Regulations except credit transactions during the past year.

In concluding that the application be denied, it appears that the Majority of the Board gave much consideration to witnesses who vigorously

testified in a general way about conditions existing in the area covered by M Street in Georgetown and especially blamed this licensee for most of the improper or illegal actions of younger persons in the area. Little attempt was made to show that violators of any laws were patrons of the licensed premises at the time of said violation and, therefore, their conduct chargeable in manner to the operation of this license.

Also the weight given to petitions, letters and telegrams received were from persons who, in the main, indicated that they may have been influenced by inflammatory statements received from a civic organization via a printed circular which requested letters and telegrams to be sent to the Alcoholic Beverage Control Board and which charge this particular licensee with practically all the ills confronting licensees in the area.

Since the record on file does not support the allegations of the protestants herein a question might well be raised to the effect that the denial of this license amounts to a revocation of an existing license without specific charges by citation and without hearing on the same as provided by the Alcoholic Beverage Control Act and Regulations.

I would grant this license.

/s/ James G. Tyson

[Filed January 28, 1966]

EXHIBIT 8

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
FOR THE DISTRICT OF COLUMBIA

RE: Applications of Kaycee, Inc.,
3263 M Street, N.W., Application
No. 8810 and of Seabright, Inc.,
3267 M Street, N.W., Application
No. 7212.

MOTION FOR ADDITIONAL FINDINGS AND FOR
CHANGES IN FINDINGS AND FOR RECONSIDERATION

COMES NOW Applicants in the above-entitled causes by and through their attorney of record, James F. O'Donnell, after reviewing the Findings of Fact and Conclusions of Law in the above-entitled causes as well as the Transcript of Proceedings furnished to the Attorney for the Applicants at his request, and respectfully move that the Board reconsider its decision in this matter, permitting the Applicants to exhaust their administrative remedies and that the Board make such additional findings and such changes in their findings as are required by law and are fair and equitable, without in any wise prejudicing the rights of the applicants to raise in other forums the questions of impartiality and conflict of interest heretofore raised before this Board.

With respect to new or changed findings the Applicants respectfully call to the attention of the Board:

1. Lack of delineation of neighborhood or findings on what constitutes neighborhood. Though the majority opinion has elected to treat the application as one for a new license and to place an interpretation upon protests and communications from persons pro and con the applications for licenses, the Board neither before the Hearing, during the Hearing, nor in its Findings has delineated what constitutes the neighborhood so that both the applicants and the protestants might in this forum and elsewhere proceed in an intelligent manner to present their case and to have effective judicial examination of the Board's Findings and Conclusions. The failure of the Board to delineate neighborhood is unusual in light of

the conclusions it has reached about the lack of rights of an existing licensee on application for license for the next subsequent year, and in light of the question put by a member of the Board to Counsel at the time of argument as to what constitutes the neighborhood, and in light of the response to such query specifically set forth in the legal memorandum filed with the Board by the Applicants, as well as in the light of the Findings delineating and defining neighborhood set forth by the Board in the K.G.M. Incorporated Case, Application No. 7548, decided on the same day, December 28, 1965.

2. The lack of a finding with respect to 3(n) of the ABC Act.

Ample testimony was offered and received by witnesses for the Applicant including ABC Inspector Stewart, buttressed by the numerous official inspection reports made part of the case so as to demonstrate that the Applicants as in past years have met the requirements of Section 3(n) of the ABC Act and are entitled to findings to such an effect. Not a scintilla of evidence was presented to show that either of the applicants ever failed to serve food or meals when the same were ordered. For its failure to make findings under Section 3(n) of the Act in the case of Foggy Bottom Restoration Society v. Frank Weakly et al, the United States District Court for the District of Columbia (Civil Action 2631-62) referred the case back to the ABC Board for additional findings under this section of the Act.

3. The lack of findings on zoning of applicant premises and of surrounding property — (such findings were made in K.G.M. Case decided on the same day). Cf. #1 under New Matters — Zoning Case, 65-95.

4. The statement appearing in paragraph 4 of the Findings (page 1) of both cases about a consent petition being submitted by the Applicant is in error. No consent petitions were submitted by the Applicants and the Rules of Procedure of the ABC Board expressly state that consent petitions are not required of the applicant. Also in paragraph 4 of both Findings (page 1) the Board erred in finding that the majority of the

telegrams received in support of the applications were from addresses "outside Georgetown", as an examination of said telegrams will demonstrate. At the same time, in making its Findings the Board failed to note, to the detriment of the Applicants, that many of those registering a protest, particularly several of the so-called Citizen witnesses, reside at addresses considerably removed from the licensed premises and within close walking proximity of a large university and other schools, fraternity houses, and several other Class "C" licensed establishments that feature entertainment and dancing. Many of the latter establishments are situated between the residences of the protesting citizens and the places of business of the Applicants. This is particularly significant when viewed in the light of the "rotten apple" letter sent by the Citizens Association of Georgetown soliciting opposition to the applications from its 1750 members and their acquaintances. Note particularly the places of residence of Messrs. Harper, Harris and Belin and Polly Shackleton. While in paragraph 3 of page 1 of the Findings in both cases the Board enumerates the number of signed protests as well as the number of individual letters and the number of individual telegrams and later enumerates some 92 individuals as signing at the time of the Hearing, the Board in this connection fails to report the extent of duplication of protest that was accomplished by different forms of protests being submitted by the same protestants, who signed protest forms and sent letters or telegrams and signed a statement of protest at the Hearing in efforts to get two or more "bites at the apple." The protest from one individual, regardless of in how many forms it may be expressed, should be counted but once by the Board.

In its findings in page 5 the Board chose to give weight and credence to the testimony of Samuel Levy, owner of real estate in which two Class "C" entertainment establishments are operated in the 3200 block of M Street, N.W. and at 1069 Wisconsin Avenue, N.W. in competition with Applicants, both of said establishments featuring entertainment. Notwithstanding the Findings that "M Street property -- is now

increasingly idle", not a shred of evidence to this effect was offered by Mr. Levy save only his personal experience with one piece of property which required fixing-up. Cross examination of Mr. Levy disclosed the recent openings of several businesses on M Street ranging from sports apparel to India imports to new carry-out places serving food. His testimony on "street fighting" on M Street was limited to a single incident rather than "several instances of street fighting" (the language of the Board's Findings). Because the only way Mr. Levy fixed the time on the alleged incident of street fighting on M Street was "this was on a Saturday night" it has been difficult and virtually impossible for the Applicants to meet and refute and/or qualify such testimony though we continue to investigate for the Truth of an incident that did not occur in either of Applicant establishments and about which there is no indication either Applicant was contacted by Mr. Levy or by the police at or subsequent to the time of the alleged incident.

5. Lack of Findings that Captain Kennedy and the ABC Inspectors found both Applicants to be very cooperative and the establishments to be well supervised and operated in an orderly fashion as appears more particularly in the Transcript at pages 90, 91, 111, 114, and 139:

At page 139, Question: "And in the area of all of the problems which you have described, when you have sought or your command has sought the cooperation of Kaycee, Incorporated and Seabright, Incorporated have they given you the measure of cooperation that is within their control?"

Answer by Captain Kennedy: "Well I found them very cooperative when I get complaints about their establishments I get — usually get there — I usually get in touch or have a lieutenant get in touch with them and they have always done what was asked of them to do." (Underscoring supplied.)

At page 90, Question: "In your capacity as the Commanding Officer of the precinct in which the applicant licensee, in which the Applicant's licensed premises are located, can you state to the Board whether or not

the policy of Kaycee, Incorporated, with regard to requests emanating from your command has been cooperative or uncooperative?"

Answer by Captain Kennedy: "I would have to say they have been cooperative from all the information I've received from the men working there and from the instructions I've given to these people, they have been cooperative." (Underscoring supplied.)

Mr. Ralph Stewart was the only ABC Inspector who testified about official inspection visits to the establishments of both Applicants. (Other ABC Inspectors who had been subpoenaed were excused when it was agreed that their Inspection Reports from February 1, 1965 to November 26, 1965 would be made part of the Record. These Reports repeatedly described both establishments as being well supervised, orderly, kitchen in operation, and ages being checked.)

At page 111, Question: "Now, on any of those occasions (of inspection), will you tell us what observations you made as to whether the premises in question were being conducted in an orderly or disorderly fashion?"

Answer by Mr. Stewart: "Well, at the time I inspected these premises -- Normally the night inspections that were made would reflect the question you're asking. Some of our night inspections -- At the night observations that we have made and I have made because those are done by appointment, the place was very orderly, under proper supervision and checking for ages of minors, checking after they came into the restaurant." (Underscoring supplied.)

At page 114 Mr. Stewart indicated the same observation (as above) were applicable to the licensed establishments of both applicants during the fiscal year commencing February 1, 1965.

These observations about the operation inside the establishments of both Applicants stand uncontradicted in the record and should have formed the basis for a Finding that the establishments during the fiscal year beginning February 1, 1965 were operated in an orderly and well supervised manner with ages being checked regularly and with

cooperation being given to the Commanding Officer of the 7th Precinct with respect to requests made by him.

Not a scintilla of evidence was presented to show that the conduct of the business of either applicant in its respective licensed premises was on occasion disorderly, lax in checking ages and patrons or without supervision.

BASIS FOR RECONSIDERATION

Reconsideration is urged based upon a fair consideration of the entire record which is now transcribed and available to the Board, independent of the and in conjunction with the foregoing request for new and changed Findings.

It is respectfully suggested that matters alleged by protestants as being specific violations of the ABC Act should have been set down by way of specific charges in customary citation form giving the licensee a fair opportunity to answer and refute the same and to present evidence bearing on the same.

In addition to the foregoing the Board should take into consideration new matters, hereinafter set forth, which have occurred since this Hearing and the Decision in this case; and in doing so it is respectfully requested that the Board set the matters and relief requested under this Motion for Hearing or Disposition as soon as is possible so that the Applicant will have timely opportunity to seek recourse in Court should this Motion be denied, without being required to terminate the valuable businesses of both applicants which would be irreparably damaged should the businesses be required to be without legal authority to operate as Class "C" licensees.

NEW AND ADDITIONAL MATTERS BEARING ON HEARING AND DECISIONS

1. Zoning Case No. 65-95 decided on January 5, 1966 by the Zoning Commission for the District of Columbia, C. M. Duke, J. Geo. Stewart, Walter N. Tobriner, John B. Duncan, and T. Sutton Jett.

Denying petition of the Citizens Association of Georgetown and others to have changed from C-2 to R-3 the zoning on certain real property situated to the north of and parallel with the 3200 Block of M Street, N.W. (where the establishments of the instant applicants are situated).

Zoning Case No. 65-95 amounts to a current and timely redetermination by the D.C. Commissioners and others of the continuing appropriate commercial character of real property contiguous with and immediately to the north of the property occupied by the instant applicants in the operation of their Class "C" licensed restaurants. This decision, affecting property in which reside many of the protestants in the instant cases, also amounts to a redetermination that without prior approval, property in that area (described in Case 65-95) may be converted from use as a residence to use as a pool hall, as a bowling alley, as a restaurant, etc. — attracting people, young and old, and automobiles.

Findings in the Kaycee, Inc. and Seabright, Inc. cases — as distinguished from K.G.M. case (decided Dec. 28, 1965) are absolutely silent on this important question of zoning of the premises where Applicants conduct business as well as on the zoning of "buffer property" actually contiguous to the licensed premises.

Photo copies of the letter of application for the change of zoning in Case No. 65-95 and of the letter communicating the decision denying the said change are being attached hereto and made a part hereof. (See EXHIBITS 1 and 2.)

Congress itself gave special attention in the ABC Act to questions of zoning. In Section 14(c) the Congress spelled out the attention to be paid by the ABC Board to the classification of zoning which surrounds a location where an ABC licensee is situated in his business. In determining the sufficiency of objections of owners of property within a radius of 600 feet of the location where an ABC license is sought the ABC Board is required by Congress under this Section to treat owners of commercial property "as consenting to the granting of such license." Thus Congress laid down a guideline of caution and of counsel for applicants for

ABC licenses indicating the prudence of selecting a locating where the majority of surrounding real property (within a 600 foot radius) would be zoned commercial.

It is respectfully suggested that this guideline ought not be ignored when the ABC Board acting under Section 14(a)5 throws onto the scale for decision and evaluation all of the factors being considered under that provision. Surely the "character of the premises" is to be considered in the light of its long-standing zoning classification, as well as how long a Class "C" license establishment has been operated therein. In considering "surroundings" surely the Board must take into consideration the zoning classification applicable to immediately surrounding real property.

In the instant cases the zoning records are officially in evidence. These records of zoning classification, the integrity and appropriateness of which were reaffirmed by the Zoning Commission on January 5, 1966, reflect that approximately 80% of the real property within an 800 foot radius of the licensed establishments of the Applicants is officially zoned commercial. It is respectfully submitted that the findings in the case are incomplete without a proper and accurate reference to this zoning situation.

When the Congress approved the basis of the new Zoning Code for the District of Columbia in 1958, it recognized the investment in good will and in location of the businessman and particularly of the holders of ABC licenses who had developed established businesses. At that time by special amendment to the ABC Law Congress gave to ABC licensees a special statutory non-conforming use. ABC Act, Section 15(c). As a result the prohibition against operating a Retailer's license in a residentially zoned area is made inapplicable for a Retailer who has been operating a Class "C" establishment in a Commercial Zone which zone, by the "Lewis Zoning" was changed to Residential Zoning. As late as 1958 Congress has recognized that the livelihood and investment of established businesses are deserving of recognition, respect, and consideration, even when possessed of ABC licenses.

2. On January 6, 1966, the National Capital Planning Commission by a six to five vote, and at the urging of the Citizens Association of Georgetown, eliminated from availability for parking purposes in congested Georgetown a large tract of real property located at M Street and Potomac Street, N. W. (in close proximity to the licensed establishments of the instant applicants) by designating as a "Landmark" the said building now housing a business dealing in auto parts in the building at one time known as the Georgetown Market.

Efforts have been made in the past by the District of Columbia Commissioners to sell the building for a parking lot. (Washington Post, Friday, January 7, 1966, Page D1)

3. Official statistics comparing recent arrests in the 7th Precinct with those in other Precincts became available on January 11, 1966 with release by Police Chief Layton of the Year End Report for 1965. Pertinent statistics from this report and from the 1963 and 1964 Annual Reports of the Metropolitan Police Department should be considered in order to get the true picture of crime in Georgetown as distinguished from the very incomplete figures on arrests given at the Hearings by Captain Kennedy and referred to in the Board's Findings on page 3. (See EXHIBIT #3.)

4. At an official Meeting of the Commissioners of the District of Columbia, on Friday, January 7, 1966, there was considered the complaint(s) of the Citizens Association of Georgetown about parking violations, disorderly conduct and other violations of law, as the basis of a proposed regulation giving the ABC Board authority to control and regulate entertainment and dancing in restaurants with ABC licenses.

Commenting on the complaints raised by the Citizens Association of Georgetown, Walter N. Tobriner, President of the Board of Commissioners, and the Member of the Board of Commissioners in charge of the Police Department, stated in substance:

I cannot go for arguments of the Citizens' Association made about unlawful acts or parking violations, or disorderly

conduct outside the licensed premises. These are matters of Police enforcement rather than violations of ABC Regulations and Act.

The Commissioner went on to note that the same or similar parking problems could occur in a situation when a Department Store may hold a bargain sale.

These observations by the President of the Board of Commissioners are in line with the unanimous decision and findings of the ABC Board in the Seabright, Inc. case of January 1965, holding that citizen complaints about vandalism, urination, and disorderly activities (testified as having taken place outside the licensed premises) were Police as distinguished from ABC matters. This view of Commissioner Tobriner and of the ABC Board in the Seabright case of January 1965 is in line with decisions on such matters as taken by the District of Columbia heretofore, and particularly the position taken by a panel of distinguished citizens, including the President of the Federation of Citizens Associations, sitting as the District of Columbia Board of Appeals and Review (with jurisdiction over license revocation and suspensions and "renewals") in Docket No. M1389, the case of Hot Shoppes, Inc., decided January 7, 1964, a case involving complaints of neighbors strikingly similar and analogous to those in the instant cases, involving the questions of noise, parking, traffic, vandalism, and other disrupting acts. The decision dealt carefully and judiciously with questions of which matters complained of are within the control of the operator of a licensed establishment and which are not. The findings in the Hot Shoppe Case will be attached hereto and made a part hereof. (See EXHIBIT #4.) It is respectfully suggested that the approach taken by the Board of Appeals and Review in the Hot Shoppe Case respects the investment and the rights of an established business while simultaneously protecting and promoting the rights and interest of neighboring residents; and it is an approach which commends itself to the ABC Board in reconsidering the decisions and the conclusions in the instant cases. This is particularly the case because:

(a) No arrests (save one citation at the Peppermint Lounge which was dismissed by the Board) were made in either of the applicant establishments during the year beginning February 1, 1965.

(b) No testimony has been received in the record as to any disorderly or other unlawful act having taken place in the licensed premises of either applicant during the current license year.

(c) Though there was testimony about people congregating on the sidewalk to look in at the dancers and the band, the testimony also shows that on request from No. 7 Police Precinct the applicant caused such windows to be painted so as to prevent the curious from seeing in.

(d) No parking violations have been identified with the operators of the establishments of either applicant, nor in fact has even a patron of either establishment been specifically been linked in the testimony with any particular parking violation or with any particular act of unlawful conduct after leaving either establishment. (There are in the record one or two instances of statements — by way of hearsay — attributed to persons mentioning the name of either applicant restaurant. But in no instance is there any follow-up by anyone bringing such a person to the restaurant for identification or of any investigative conversation with the management of either restaurant regarding such possible patronage and the conduct of the individual involved.)

(e) Noise was the subject of some testimony in the instant cases as it was also in the Hot Shoppe case. Here we heard no testimony from any person that he was, by noise emanating from either of applicant restaurants, disturbed in the enjoyment and quiet at his place of residence. We had only testimony on noise emanating from the restaurant offered by persons who traversed busy M Street in the commercial zone. There was no evidence of any charges placed against the applicants for noise in violation of police regulations during the current license year. There was uncontradicted testimony that during current license year applicants made structural improvements to the rear of their premises in the nature of soundproofing and visited the home of a neighbor across the alley in

the rear of the restaurant to confirm the effectiveness of this soundproofing.

(f) It is now represented to the Board that applicants are in the process of installing soundproofing in the part of their establishments which faces M Street so as to minimize and alleviate even such noise as was or may have been a cause of displeasure to Mr. Capello and his machine.

The Applicants remain willing to give to the ABC Board the same measure of cooperation on the question of noise as they gave to Captain Kennedy's request on painting out the window. Also Applicants will continue to be open to suggestions from citizen groups, businessmen, and owners of commercial property in seeking general improvement of the Georgetown parking situation as well as legal spaces for prospective customers of the applicants. Applicants continue to make available to the public the rest room facilities of both establishments reserving only the policy of refusing admittance to the restaurants persons under eighteen years of age or who may give the appearance of intoxication. On week ends patrons are being informed that rest rooms will be kept open for a period of twenty minutes after the bar is closed. Applicants have received very few complaints from neighbors and citizens in current license year. They are open-minded to such suggestions of neighbors as they can reasonably accommodate or for which they can seek solutions in cooperation with other licensees, businessmen, and citizens.

FOR THESE REASONS, and for reasons hereinabove set forth, it is respectfully requested that the Alcoholic Beverage Control Board reconsider its decisions and its findings of fact and its conclusions in the instant cases and enter new findings in line with those requested in this Motion and enter decisions favorable to the Applicants in both cases.

In keeping with the approach, philosophy, and guidelines set forth in the Hot Shoppe, Inc. case before the Board of Appeals and Review (Docket No. M1389 decided January 7, 1964) the instant applicants stand ready and willing to take all reasonable steps within their control so as to

alleviate and minimize any complaints over which the applicants have control.

Respectfully submitted,
/s/ James F. O'Donnell
Attorney for Kaycee, Inc. and
Seabright, Inc.

[Certificate of Service]

EXHIBIT #1 to EXHIBIT 8

THE CITIZENS ASSOCIATION OF GEORGETOWN
(* * *)

Excerpts From Minutes Of Meeting Of
Citizens Association of Georgetown
November 8, 1965

Zoning Report

A number of home-owners on Prospect Street between Potomac Street and Wisconsin Avenue, and on Potomac Street between Prospect & "M" Streets, have petitioned the Zoning Commission to rezone these two blocks, excepting the commercial strip on "M" Street and on Wisconsin Avenue, from C-2 to R-3.

This rezoning was requested in order to preserve the largely residential character of these two blocks which has persisted in spite of many years of commercial zoning.

A hearing before the Zoning Commission has been scheduled for December 8th, and the proponents of the rezoning request the support and help of the Citizens Association and of property owners in the area.

Such rezoning would not only preserve the residential character of the area and its attractive homes, but would prevent the spread of the "M" Street strip into these residentially developed blocks.

RESOLUTION: THAT THE CITIZENS ASSOCIATION OF GEORGETOWN SUPPORT AND HELP THE HOME-OWNERS IN THEIR APPEAL FOR REZONING FROM C-2 TO R-3 OF THE STATED TWO-BLOCK AREA.

/s/ Robert F. Evans
(Col. Ret. USA)
Secretary

30-N

EXHIBIT #2 to EXHIBIT 8

January 5, 1966

CASE #1

Zoning Commission File No. 65-95

William H. Greer, Jr.
603 Walker Bldg.
Washington, D. C.

Dear Mr. Greer:

The Zoning Commission in executive session on January 4, 1966, after public hearing held on December 8, 1965, denied a proposal which includes the petition of Robert R. Macatee et al to amend the Zoning Map by change from C-2 to R-3 the following property:

The north side of Prospect Street that portion of Chevy Chase Dairy Property opposite premises 3224 Prospect from there west to Potomac Street inclusive; on the south side of Prospect Street premises 3224 Prospect Street through 3256 Prospect Street to Potomac Street; on the east side of Potomac Street all property from Prospect Street to the north line of 1211 Potomac Street and alley between 1211 and 1217 Potomac Street.

/s/ H. G. Ashton
Administrative Officer

HGA/vlj
cc: Mrs. Hinton

EXHIBIT #3 to EXHIBIT 8

PERTINENT STATISTICS FROM ANNUAL REPORT,
METROPOLITAN POLICE DEPT.
FOR 1963, 1964, and 1965

These Reports reveal that No. 7 Precinct had less arrests for Class I Offenses than any of the other 13 precincts during 1963 and 1964, and was second lowest in 1965 (Class One Offenses include Criminal Homicide, Rape, Robbery, Aggravated Assault, Housebreaking, Larceny, Auto Theft, and attempts at some of the foregoing. See p. 38, Annual Report Metropolitan Police Department 1963 and 1964, and draft of 1965 Report.)

Furthermore, the 7th Precinct had less juvenile arrests in fiscal 1963 than any other precinct in the city and was thirteenth out of fourteenth during fiscal 1964 and 1965. (See page 51, Annual Report, Metropolitan Police Department, 1963 and 1964, and draft of 1965 report.)

Urination is not listed as a separate offense in the section on charges of the Annual Report of the Police Department. However, presumably this would be covered under the heading of disorderly conduct. In that regard, Precinct No. 7 had less arrests than all precincts except one during fiscal 1963, fiscal 1964 and fiscal 1965 than all except two other precincts. (See p. 39, Annual Report, Metropolitan Police for Fiscal 1963 and 1964, and draft of 1965 report.)

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF APPEALS AND REVIEW

Re: Docket No. M 1389

Appeal of Hot Shoppes, Inc.
3250 Pennsylvania Avenue, S. E.

Appeal from proposal of the Department of Licenses and Inspections to suspend the restaurant license of Hot Shoppes, Inc., at 3250 Pennsylvania Avenue, S. E.

Hot Shoppes, Inc. appealed a written proposal of the Department of Licenses and Inspections, dated July 29, 1963, to suspend for a period of thirty days License No. 4287, issued to Hot Shoppes, Inc. for the Mighty Mo Restaurant at 3250 Pennsylvania Avenue, S. E., based upon a number of complaints by area residents and the alleged failure of appellant to remedy the conditions complained of.

At the proceedings before this Board on November 14, 15 and 18, 1963, and the final arguments on December 10, 1963, the Hearing Committee consisted of Leonard M. Hill and W. Herbert Gill, Members, and James A. Willey, Esq., Chairman. The Department of Licenses and Inspections was represented by Mr. John F. Middleton, Assistant Corporation Counsel, and appellant was represented by Frank H. Strickler, Esq., of the firm of Whiteford, Hart, Carmody & Wilson. Numerous witnesses appeared for both sides, including officials of the Department of Licenses and Inspections, the Police and Health Departments, officials of Hot Shoppes, Inc. and many of the area residents.

STATEMENT OF FACTS

The ground at 3250 Pennsylvania Avenue, S. E. was owned by the Hot Shoppes for a period of some years prior to 1959 when the present installation was erected. Prior to the erection of the present drive-in restaurant, some of the area residents had encouraged the Hot Shoppes to establish a restaurant on the premises. After the building was

completed and the operation commenced, many of the area residents were disappointed that, although constructed under the then Zoning Regulations, the installation was primarily a drive-in restaurant. Complaints were made almost immediately concerning the lights, which were causing some inconvenience to the neighbors, and the noise emanating from the property. Substantial changes were made in the lighting and attempts were made to control the noise on the premises, but complaints continued to be received by the Department of Licenses and Inspections concerning the operation of the drive-in restaurant and the conduct of its patrons. These complaints culminated in a hearing in the Office of the Department of Licenses and Inspections on October 2, 1962, at which the area citizens were given an opportunity to air their complaints and appellant was given an opportunity to reply thereto and state what could be done to remedy the causes thereof. Thereafter, for a period of several months, the Department of Licenses and Inspections caused an investigation to be made concerning the underlying causes of the complaints. The attorney for the citizens was advised by letter of March 8, 1963 that a lengthy and thorough investigation of conditions at the Mighty Mo had been concluded, and that there was no current justification for license suspension or revocation. The Department received a letter dated April 3, 1963 from Richard J. Green, "Chairman, Mighty Mo Committee, Fort Davis Citizens Association," reiterating the complaints which had resulted in the aforesaid conference. A further investigation was made by the Department, and Mr. Richard J. Green was informed by Department letter dated April 18, 1963 that there was no evidence available which would sustain a proposal to deny, suspend or revoke the license of the Mighty Mo. Thereafter, a petition dated July 24, 1963, signed by 145 residents of the vicinity of 3250 Pennsylvania Avenue, S. E., was received by the Department of Licenses and Inspections, which thereupon issued and sent to appellant a notice of the proposed suspension, dated July 29, 1963.

One of the most serious complaints of the neighbors in the area results from the unlawful use of automobiles on Pennsylvania Avenue

and adjacent streets in the immediate vicinity of the Hot Shoppes. Such conduct on public thoroughfares is, of course, beyond the control of the Hot Shoppes management. Pennsylvania Avenue, on which this installation is situated, is the borderline between the 11th and 14th precincts, No. 14 precinct being responsible for one side of the Avenue and No. 11 the other. How frequently the two precincts patrol the area was not shown by the evidence, nor did the evidence show whether or not the Commanders of these precincts considered this installation to be a "trouble spot". It is a matter of common knowledge that potential trouble spots in other areas of Washington are adequately controlled by frequent police surveillance. It would, therefore, seem that a closer surveillance of this area by one or both of these Metropolitan Police Precincts, together with adequate policing of the Hot Shoppes premises by its management, through employment of private policemen or otherwise, should alleviate much, if not all, of the area disturbances.

SPECIFIC FINDINGS

The Board finds the following facts to have been established by the evidence:

1. Certain persons living in the immediate vicinity of the Mighty Mo have been disturbed by loud, boisterous and rowdy behavior by patrons of the establishment on the Mighty Mo premises, and that this behavior consisted of shouting, screaming, loud radio playing, racing of automobile motors and blowing of horns.
2. All objectionable lights on the Mighty Mo premises have been corrected, with the exception of some lights on the roof which do annoy several of the residents of the area.
3. The unlawful racing of cars on O Street and Pennsylvania Avenue occurs with some frequency but is beyond the control of the Mighty Mo management.
4. Although certain cooking odors, at times, emanate from the Mighty Mo premises, they are those to be normally expected for a restaurant of its size and volume of business and efforts have been made to minimize them.

5. There is no rise in vandalism in the neighborhood which can be attributed to the Mighty Mo operation.

6. Although there is some litter along Pennsylvania Avenue and adjacent streets, some of which bears Hot Shoppes or Mighty Mo insignia, this is obviously thrown from moving automobiles and is beyond the control of the Mighty Mo management.

7. Some form of condiment, mustard or ketchup, was squirted upon a parked car in the vicinity of the Mighty Mo, but this act of vandalism was not traced conclusively to the Hot Shoppes.

8. The critical period in the operation of the Mighty Mo Restaurant is during warm weather when, because of open windows and porches, sound carries to the area residents and conditions seem more aggravated.

CONCLUSIONS OF LAW

The proposed suspension order of the Department of Licenses and Inspections, dated July 29, 1963, is hereby modified to provide that the said suspension of license shall become effective on February 8, 1964 unless the Hot Shoppes shall, prior thereto, take such steps as may be necessary to adequately control and eliminate the conditions referred to in Findings No. 1 and 2 and continue such control so as to prevent a reoccurrence thereof.

/s/ James A. Willey, Esq.
Chairman, Hearing Committee

January 7, 1964

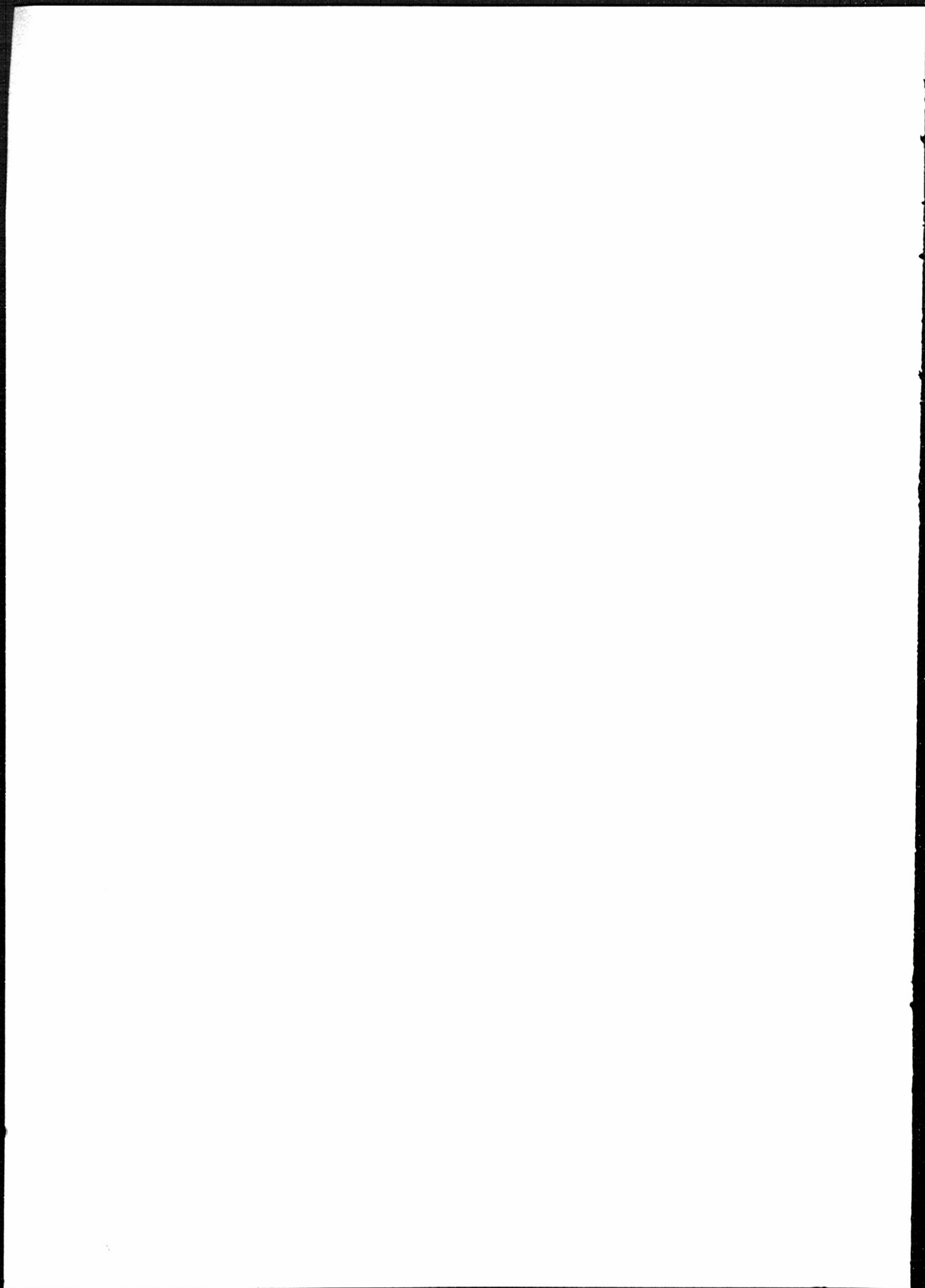
EXHIBIT 9

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

January 24, 1966

MEMORANDUM OPINION AND ORDER

On January 13, 1966, counsel for the applicants filed with the Board a motion for additional findings and for changes in findings and for reconsideration. A timely opposition to the motion was filed with the Board by the protestant Citizens Association of Georgetown.



The motion for reconsideration is denied. The "new materials" presented by the applicant are not relevant to the issues decided by the Board in this case. Moreover, there is no provision in the Board's Regulations which permits the filing of a motion for reconsideration upon the denial of an application for an alcoholic beverage license.

The motion for additional findings is in part granted and in part denied for the following reasons:

(1) The Board is not required to make a specific finding with respect to Section 3(n) of the Act. In any event, the testimony concerning that Section had no material bearing on the Board's decision.

(2) No finding is required concerning the established zoning where the applicants' premises are located. Nevertheless, the zoning was established as being C-2 at the time when the original applications were filed and the hearing record revealed that that zoning classification remains unchanged.

(3) The Board has not ordinarily delineated a neighborhood when other than an original application is filed. The neighborhood was delineated by the Board when the original applications were filed and, absent any request for a change, remains the same throughout subsequent applications. Nevertheless, the following additional finding of fact is incorporated by reference and made a part of the findings and decision of the Board in these cases:

"Beginning at 31st and P Streets, N.W.; P Street, N.W., west to Wisconsin Avenue, N.W.; Wisconsin Avenue, N.W., southeast to P Street, N.W.; P Street, N.W., west to 37th Street, N.W.; 37th Street, N.W., south to Canal Road, N.W.; Canal Road, N.W., east to Whitehurst Freeway; Whitehurst Freeway, southeast to 31st Street, N.W.; 31st Street, N.W., north to P Street, N.W."

(4) The motion for change in findings is granted. Paragraph 4 of page 1 of the Board's Findings for each application is amended to read as follows:

"One hundred eighty-six consent telegrams were received between 4 and 6 a.m. on the day of the hearing from a variety of addresses. The telegrams were almost identical in wording, utilizing two standard forms. Applicant's attorney at the opening of the hearing requested and obtained a Board ruling that no communications received subsequently would be included in the record even though the hearing was continued until November 26, 1965."

ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson

/s/ James G. Tyson

/s/ J. Bernard Wyckoff

[Filed January 28, 1966]

MOTION FOR TEMPORARY
RESTRAINING ORDER

Come now the plaintiffs by their attorneys and respectfully move the court for a temporary order restraining the defendants, their agents, servants, employees or attorneys, from in any manner interfering with the continued present conduct of the plaintiffs' businesses pending hearing on plaintiffs' motion for a preliminary injunction.

For reasons therefore, plaintiffs respectfully show that the orders from which relief is sought are void because:

1. The plaintiffs' Retailer's Licence Class "C" will expire by their terms at midnight on January 31, 1966.
2. The denial of plaintiffs' renewal applications was erroneous, arbitrary and capricious and without foundation either in law or fact.
3. The participation of defendant Wyckoff as a member of the Board denied the plaintiffs of their property without due process of law and their right to a fair and impartial hearing.
4. The refusal of defendant Wyckoff to disqualify himself and/or the refusal of the Board to disqualify him resulted in plaintiffs being deprived of their property without due process of law.

Respectfully Submitted,

James F. O'Donnell
927 15th Street, N. W.
Washington, D. C.

Denis K. Lane
917 15th Street, N. W.
Washington, D. C.

Attorneys for
Kaycee, Inc. and Seabright, Inc.

[Filed January 28, 1966]

MOTION FOR PRELIMINARY INJUNCTION

Come now plaintiffs by their attorneys and move the court for a preliminary injunction in the above-entitled cause ordering the defendants to issue to the plaintiffs, subject to disposition of this case by the Court on its merits, Retailer's licenses Class "C" for the period commencing February 1, 1966, or in the alternative for a preliminary injunction enjoining the defendants, their agents, servants, employees and attorneys, from in any manner interfering with the continued present conduct of the plaintiffs' businesses, pending a hearing on the merits, of their applications for the renewal of Retailer's Licenses Class "C".

For reasons therefore, plaintiffs respectfully show that the orders from which relief is sought are void because:

1. The plaintiffs' Retailer's Licences Class "C" will expire by their terms at midnight on January 31, 1966.
2. The denial of plaintiffs' renewal applications was erroneous, arbitrary and capricious and without foundation either in law or fact.
3. The participation of defendant Wyckoff as a member of the Board denied the plaintiffs of their property without due process of law and their right to a fair and impartial hearing.
4. The refusal of defendant Wyckoff to disqualify himself and/or the refusal of the Board to disqualify him resulted in plaintiffs being deprived of their property without due process of law.

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917 15th Street, N. W.
Washington, D. C.

Attorneys for
Kaycee, Inc. and Seabright, Inc.

[Filed January 28, 1966]

**TEMPORARY RESTRAINING ORDER
WITHOUT NOTICE**

WHEREAS, in the above-entitled cause it has been made to appear by the verified complaint filed herein, which was on this 28th day of January, 1966, presented to the Honorable John J. Sirica, Judge of the United States District Court for the District of Columbia, that a restraining order preliminary to hearing upon motion for a preliminary injunction should issue, without notice because immediate and irreparable injury, loss or damage will result to the plaintiff before notice can be served and a hearing had thereon, in that the plaintiffs herein will be deprived of their Retailer's Licenses Class "C" which will seriously impair if not ruin their lawful and flourishing businesses; which said licenses have been issued and reissued to said plaintiff Kaycee, Inc. for three consecutive license years; and to the plaintiff Seabright, Inc. for eleven consecutive license years at the same locations.

Notice and a hearing before entering a temporary restraining order should not be required because it is apparent that time will not permit notice and hearing thereon before the plaintiffs will be deprived of their Retailer's Licenses Class "C", and it is further apparent that no damages or injuries whatsoever can result to the defendants herein, or to any person wrongfully enjoined hereby.

Now, therefore, on motion of the plaintiffs

It is ORDERED that the defendants, the members of the Alcoholic Beverage Control Board for the District of Columbia, their agents, successors, deputies, servants, employees, and attorneys, and all persons acting by, through or under them, or by or through their order, be, and they are hereby restrained until February 7, 1966, from in any manner interfering with the continuance and active conduct by the plaintiffs of their restaurants at 3263 and 3267 M Street, respectively, in the District of Columbia; and said defendants are further restrained, as officials in their official capacity, from denying the applications of the plaintiffs for

renewal of their Retailer's License, Class "C".

It is further ORDERED that the plaintiffs' motion for preliminary injunction be, and set for hearing in this Court on February 3, 1966, at 10 o'clock A.M.

It is further ORDERED that the above and foregoing order shall expire on February 7, 1966, unless it is further extended by order of the court.

This temporary restraint is on condition that a bond be filed by the plaintiffs herein in the sum of \$500 dollars in the form and manner required by law.

Issued at 2:10 o'clock, P.M.

this 28 day of January, 1966

/s/ John J. Sirica
District Judge

[Filed February 3, 1966]

CONSENT ORDER

Counsel for the respective parties, having consented thereto, it is, by the Court, this 3rd day of February, 1966,

ORDERED: That plaintiffs' motion for preliminary injunction be, and it is, hereby continued to March 1, 1966, for hearing before this Court and, it is,

FURTHER ORDERED: That the temporary restraining order entered herein be, and it shall be, continued and remain in full force and effect until disposition of plaintiffs' motion for preliminary injunction or until further order of this Court.

/s/ Oliver Gasch
JUDGE

WE CONSENT:

/s/ James F. O'Donnell
JAMES F. O'DONNELL,

Attorney for Plaintiffs,
927 15th Street, N.W.

/s/ Robert R. Redmon
ROBERT R. REDMON,

Assistant Corporation Counsel, D.C.
Attorney for the Defendants
District Building
Washington 4, D.C.

[Filed March 4, 1966]

MOTION TO QUASH DEPOSITION AND TO BAR DISCOVERY

The defendants, Joy R. Simonson, James G. Tyson and J. Bernard Wyckoff, members of the Alcoholic Beverage Control Board of the District of Columbia (hereinafter referred to as the Board), move the Court, through counsel, for an order quashing the oral deposition of J. Bernard Wyckoff, which has been noted by plaintiffs for March 12, 1966, at 9:30 a.m., and to bar any discovery by plaintiffs in this case.

As grounds therefor these defendants aver that plaintiffs are limited to a review of the administrative record before this Court concerning both the question of disqualification and the merits of their application for Alcoholic Beverage Licenses, Class "C", which were heard and decided by this Board.

/s/ Milton D. Korman
Acting Corporation Counsel, D. C.

/s/ John A. Earnest
Assistant Corporation Counsel, D. C.

/s/ Robert R. Redmon
Assistant Corporation Counsel, D. C.

[Filed March 8, 1966]

OPPOSITION TO MOTIONS TO QUASH
DEPOSITION AND TO BAR DISCOVERY

The plaintiffs, Kaycee, Inc. and Seabright, Inc., District of Columbia Corporations in good standing, enter opposition to defendants Motions to Quash Deposition and to Bar Discovery, particularly by way of oral deposition of J. Bernard Wyckoff, Walter N. Tobriner, Polly Shackelton, and Peter Belin noted by plaintiffs and set for March 12, 1966.

As grounds therefor, plaintiffs aver that such discovery and aforesaid depositions are necessary and proper in plaintiffs' pursuit of and preparation for hearing on Motion for Preliminary Injunction and for

Permanent Injunction now pending before the Court, particularly allegations made in said complaint and Motion questioning the integrity of the decision of the Alcoholic Beverage Control Board of the District of Columbia.

James F. O'Donnell
Attorney for Plaintiffs

Denis K. Lane
Attorney for Plaintiffs

[Filed March 9, 1966]

**MOTION OF THE DEFENDANTS JOY R. SIMONSON, J. BERNARD
WYCKOFF AND JAMES G. TYSON FOR SUMMARY JUDGMENT**

The defendants, Joy R. Simonson, J. Bernard Wyckoff and James G. Tyson, members of the Alcoholic Beverage Control Board in the District of Columbia, move the Court for an order granting them summary judgment. As grounds therefor, these defendants aver that the complaint when read, together with the certified record of this Board in applications numbered 7212 and 8810, filed in this action and incorporated by reference herein and made a part hereof and the exhibits attached to all other pleadings, demonstrates that there is no genuine issue as to any material fact and that these defendants are entitled to judgment as a matter of law.

/s/ Milton D. Korman
Acting Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation Counsel,
D. C.

[Filed March 21, 1966]

OPPOSITION TO MOTION
OF DEFENDANTS
FOR SUMMARY JUDGMENT

The plaintiffs, Kaycee, Inc. and Seabright, Inc., District of Columbia Corporations in good standing, enter opposition to defendants' Motion for Summary Judgment. As grounds therefor, these plaintiffs aver that the complaint when read, together with the certified record of this Board in applications numbered 7212 and 8810, filed in this action and incorporated by reference herein and made a part hereof and of the exhibits attached to these and all other pleadings, demonstrate that there is a genuine issue as to material facts, that the record made at the Hearing is without substantial evidence to support the conclusion of the majority of the Board, that the decision of the Board was arbitrary and capricious and was in substantial part the result of bias and prejudice of a Board member, and that defendants are not entitled to judgment as a matter of law.

/s/ James F. O'Donnell,
Attorney for plaintiffs

/s/ Denis K. Lane,
Attorney for plaintiffs

[Filed April 7, 1966]

ORDER

Upon consideration of Defendants' Motion to Quash Depositions of J. Bernard Wyckoff, Peter Belin, Walter Tobriner, and Polly Shackleton and the Bar Discovery by the Plaintiffs, and upon consideration of oral arguments in open Court by counsel for all parties in these cases, it is this day of March, 1966.

ORDERED that Defendants' Motion to Quash Deposition of J. Bernard Wyckoff and Peter Belin and to bar discovery from the same is by the Court Denied, and that Defendants' Motions to Quash Depositions of Walter Tobriner and Polly Shackleton, and to bar discovery from the said parties are by the Court granted without prejudice to the Plaintiffs renewing efforts to take such depositions and pursue such discovery following completion of the depositions of J. Bernard Wyckoff and Peter Belin and upon making proper showing to the Court.

/s/ John J. Sirica
Judge

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

1

Friday, November 26, 1965

VOLUME I

PROTEST HEARING

BEFORE:

JÓY R. SIMONSON, Chairman of the Board
JAMES G. TYSON, Member of the Board
J. BERNARD WYCKOFF, Member of the Board

* * * * *

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(Excerpt - November 24, 1965 - 10:00 o'clock A. M.
Preliminary matters)

MR. O'DONNELL: May I be heard on a preliminary Matter?

THE CHAIRMAN: Mr. O'Donnell.

MR. O'DONNELL: With respect to application No. 7212 and 8810, Seabright, Inc. and Kaycee, Inc., I am requesting a clarifying rule at this time respecting the treatment to be given any written communications as may be received by this Board after 10:00 a.m. this morning by way of a letter or a telegram or other written communications in favor of a license or opposing it. I know in the past this matter has come before Boards, perhaps not this Board, and if my memory serves me correctly the treatment has usually been that written communication, as far as being con-

sidered, will terminate as soon as the hearing is called, even though the case can't be heard at this juncture. We would ask for a ruling of the Board on that question.

* * * * *

6 THE CHAIRMAN: Well, inasmuch as your request is not being contended Mr. O'Donnell, there is no problem presented and communications which are received later than 10:00 a.m. today at the A.B.C. Board office will not be made a part of the record of these hearings which will come up later in the day but were scheduled.

MR. O'DONNELL: By way of preliminary matters and also intended to serve as a guide to both applicants on these cases, which indicating our turn on the calendar at this time to avoid any possible misunderstanding, I would like to state that the applicants for the applications in both of these cases that we move that the two cases 7212 and 8810 be considered consolidately and together and I'll state my reasons for that.

* * * * *

9 THE CHAIRMAN: The Board will rule that those cases will be heard separately and we will determine later which one comes first.

* * * * *

15 MR. O'DONNELL: If the Board please, I have prepared a written motion and I will furnish Counsel with a copy of it. The motion speaks for itself. I would like to hand it to the Board.

(Motion handed to the Board)

THE CHAIRMAN: Mr. O'Donnell, do you have an extra copy for the Board's Counsel, if not we will give him one of ours.

* * * * *

16 THE CHAIRMAN: Mr. O'Donnell, we'd be pleased to hear your argument for this motion. We do not think it is really self-explanatory.

MR. O'DONNELL: I will be pleased to answer any questions. I think it is self-explanatory. Maybe I shouldn't -- Maybe I should respond to the questions of the Chairman.

It is a motion addressed to all three members of the Board for the purpose of discharging my responsibility as a lawyer in this case where the license and consequently the livelihood of the applicants, officers, director, stockholders, and employees are at stake. Under court decisions, particularly the case of W. Smith Jarrott, Civil Action 1760-63, the United States District Court on 1/28/64 this is the case involving the Russian Embassy in the Bonnie Brae matter. The court, among other things, made very clear an opinion of Judge Pine that officers of administrative bodies of the District of Columbia with respect to the question of impartiality in fairness, impartiality and independence, are bound by the same law as the judges of our court. I respectfully submit that I can think of no judge of the United States District Court under the circumstances being presented in this case who would hesitate for one moment to excuse himself from participating in the proceedings. I might state that I'm prepared to present testimony and to go further in the matter.

* * * * *

- 17 So, I will have to await a decision on this motion before I determine how much evidence I should proffer.

* * * * *

- 18 **THE CHAIRMAN:** There has been filed with the Board a motion the purport of which is that any member of the Board who participated in opposition to the granting of a Class "C" license applied for by Seabright, Inc., for the premises 3267 M Street, Northwest, for the license year commencing February 1, 1965, should disqualify himself from consideration of the application of Seabright, Inc., for a license for the same
- 19 premises for the license year commencing February 1, 1966 and from the consideration of the current application of Kaycee, Inc., for a Retail Class "C" license for premises 3263 M Street, Northwest, of both of which corporations one Ernest E. Byrd is a principal officer and stockholder.

The Members of the Board have carefully considered the motion and have ascertained from amongst their members that none of the Board directly participated in opposition to the application of Seabright, Inc., for

the license year commencing February 1, 1965. Although it is possible that members of the Board, as members of certain civic groups, were present when such groups concluded to file such opposition, individual Board members have no individual recollection thereof and are clear in their present conclusion that the matters now before the Board can be decided entirely upon the present record and the evidence which will be presented to the Board. There is nothing contained in or filed with the motion to indicate prejudice on the part of any member of the Board and none is found to exist. The motion is accordingly denied.

MR. O'DONNELL: Thank you.

Madam Chairman, in light of the Board's ruling and in line with the case of Securities and Exchange Commission versus R. A. Holeman and Company, 116 U. S. Appeals, D. C. 279, at this time I would like permission from the Board to put on testimony bearing on that motion.

MR. NIBLACK: Madam Chairman, I believe the motion has been ruled upon by the Board. I think putting on testimony would be superfluous.

MR. O'DONNELL: If the Board please, the language of the case and the purpose of the motion is that I don't want to waive any rights of the applicant here and there is certainly rulings of law to the effect that when an opportunity is pleaded and this was the case in that case which I have cited, and the applicant fails to lay on the record background, that he may be precluded at a later date. In the case which I have cited to the Board the court reversed the decision of the Securities and Exchange Commission and sent the matter back for rehearing with authority to the respondent in that case to make the record.

MR. NIBLACK: Madam Chairman, I would request if the Board feels so inclined I would ask Mr. O'Donnell to make a proffer of such proof.

THE CHAIRMAN: The proffer of his testimony or the nature of the evidence?

MR. NIBLACK: Yes. A proffer of the evidence.

THE CHAIRMAN: Do you care to do so Mr. O'Donnell?

MR. O'DONNELL: My preference would be to let the testimony

21 speak for itself since it is in an area where I am not certain what the testimony may be, but if the Board deems it appropriate I want to be permitted to go forward. Under those circumstances I shall be glad to make a proffer.

THE CHAIRMAN: Will you make a proffer please.

MR. O'DONNELL: It is believed that evidence adduced, under oath, at this hearing would establish one: that in January, 1965, the Citizens Association of Georgetown entered formal and active protest of the then pending application of Seabright, Incorporated for a Retailer's Class "C" license at 3267 M Street, Northwest, at a time when Ernest E. Byrd was a principal stockholder and officer of said corporation. And the Citizens Association, then represented to the A.B.C. Board, on sworn testimony, that the protest was made pursuant to an official action of the Association keeping with its by-laws. Further it is proffered the testimony would show that the time the Citizens Association appeared, as indicated, and actively protested that license Mr. J. Bernard Wyckoff was a member of the Association and gave his support to such action. It is further believed and it is proffered that the testimony would show that at the time of this partisian participation by the Citizens Association which is a party to this action again today J. Bernard Wyckoff was in fact the duly elected official secretary of the Citizens Association in question in an active capacity and remained so for many months subsequent thereto in 1965, and that he
22 was in that capacity when appointed to the Alcoholic Beverage Control Board for the District of Columbia on August 19, 1965.

I say, Mr. Wyckoff, I would be glad to have you take the stand and bear the record. So far I have been denied that and in making a proffer of something I may not believe. This is true. There is nothing personal about it but this is a proffer of what I think the testimony could show and further, that it was not until subsequent to September 1, 1965, that the Citizens Association elected a man to succeed Mr. Wyckoff in the capacity of secretary.

It is further believed that, and proffered that the evidence would show that the Association, which is a party of interest in this action, the Citizens Association of Georgetown, which is a party of interest to the case I referred to earlier, under those circumstances and under that connection that the Association has, by written and other communications, indicated its policies including the Association's opposition to the instant applications. All of which are in the nature of ex parte communications from a party of interest and now, as a matter of fact, before this Board in this matter.

23 Further, it is proffered that the evidence would show that there are in the files of this case, officially, numerous communications of protests from persons who are long-standing friends and who are immediate neighbors of J. Bernard Wyckoff at and about the place of his residence on O Street, Northwest, Washington, D. C.

That, Lady and Gentlemen of the Board, is what I believe the evidence would show or tend to show. It would be facetious on my part to say it is positive, to say it positively would show that, but this is the proffer of evidence.

MR. NIBLACK: I think the proffer speaks for itself, Madam Chairman. A man's neighborhood has nothing to do with objectivity on the part of this Board. The Board has already stated that Mr. Wyckoff was a member of the Association but that membership does not amount to direct participation, and it certainly doesn't show any lack of objectivity. I think Mr. O'Donnell was facetious in saying that this man's neighbors have any connection on his objectivity before the Board. I think it speaks for itself.

(The Board conferred)

THE CHAIRMAN: The Board states at this time that we will proceed with the case, not with evidence on this motion.

MR. O'DONNELL: In that event, if the Board please, I offer a second motion in writing which is self-explanatory; so it may be part of the record.

(The Board conferred)

THE CHAIRMAN: The Board has given consideration to the motion and the supporting affidavit of Mr. O'Donnell and at this time the motion is denied.

MR. GREER: We would like for the Board to take note of the close proximity of the R3 area to the C2.

THE CHAIRMAN: This is on the record.

PHYLLIS BEN KAHLA

took the witness stand, for and in behalf of the Applicant, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

Q.***

Mrs. Ben Kahla, would you please state your name and residence address for the record? A. My name is Phyllis C. Ben Kahla, I reside at 5550 Columbia Pike, Arlington, Virginia.

Q. Are you married Mrs. Ben Kahla? A. Yes, I am.

Q. And are you an officer of Kaycee, Incorporated, the applicant in this matter? A. Yes. I am president of the corporation.

Q. What is your husband's name? A. Ahmed Ben Kahla.

Q. Does your husband take an active part in the business of the corporation? A. Yes, very much so.

Q.***

And did there come a time in 1965 when there was any change in the officers in Kaycee, Incorporated? A. Yes. On or about the 18th of June, in 1965, a new partner came into the corporation and became an officer also, Mr. Ernest Byrd. He purchased it from our other partner, Mr. Aniba.

Q. Is it your testimony that on or about the 18th of June your former associate in the business Mr. Aniba consummated a contract to sell his stockholding interest to Ernest E. Byrd? A. That is true.

Q. Pursuant to that transaction was the Alcoholic Beverage Control Board subsequently notified of a change of officers in the corporation? A. Yes, it was.

Q. And pursuant to that transaction did Mr. Aniba resign from the corporation? A. Yes, he did.

Q. Was his office assumed by Mr. Byrd? A. Yes, it was.

33 Q. And at about the time in this connection at the directors meeting in which the matter was approved, did Kaycee, Incorporated take any steps to assume any additional or new trade name? A. Yes, it did. At the time that the contract was signed also included was the change of name from the Cous-Cous to the Peppermint Lounge.

* * * * *

Q. And to your knowledge has any member of the corporation, were officers on approval of the Alcoholic Beverage Control Board, that is the previous officers plus Mr. Byrd, were any of these parties arrested subsequent to February 1, 1965? A. To my knowledge no one was.

Q. To your knowledge was the license of Kaycee, Incorporated cited for any violations of the Alcoholic Beverage Control Act subsequent to February 1, 1965? A. There was one occasion which we were cited.

Q. And that occasion involved a formal appearance before the Alcoholic Beverage Control Board? A. It did.

34 Q. And what was the decision of the Board with respect to the citation against the licensee? A. It was dismissed.

Q. And was the corporation cleared of responsibility? A. At the same time it was cleared, yes.

Q. Other than that incident to which the corporation was exonerated were there any other occasions when the corporation was summonsed in way of a citation to appear before the Alcoholic Beverage Control Board? A. To my knowledge I don't believe so.

36 Q. When you decided to open up this restaurant did you have a particular theme of operation in mind? A. Yes. We wished to operate Arabian Food restaurant.

Q. Subsequent to February 1, 1965, did Kaycee, Incorporated ever get into the business of operating an Arabic restaurant? A. Yes, we did.

37 Q. And what particular food item or items have been the speciality of the house? A. Cous-Cous number one, which is the favorite food of many countries in the Near East.

Q. Was this introduction of Cous-Cous in the 3200 block of M Street, Northwest well received among the gourmet critics of Washington? A. Yes. It was quite well received as a matter of fact.

41 Q. Now, what type of music is currently featured at the restaurant? A. Currently featured is a type of rock-and-roll music.

44 Q. About noise or anything like that? A. Yes. We did as much as we could. We maintained a strict disciplinary policy on the premises and outside the premises as much as we could. Naturally we could not control the sidewalk. We can control the doorway and kept it clear at all times and any undue noise and anyone who offered any trouble to ourselves or our patrons were escorted from the premises. They were first asked peacefully to leave and if they did not leave then the police were called in in accordance with the regulations, to be escorted out.

Q. Did the corporation spend any money to shore up its premises or sound-proof it? A. Yes, it did. It spended a bit of money sound-proofing the ceilings and the back rooms which were built on.

Q. Would that be the area that is toward the alley? A. Yes, it is.

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CROSS EXAMINATION

BY MR. NIBLACK:

46 Q. What is the rated capacity of your restaurant, Mrs. Ben Kahla?

A. I believe 84 upstairs and 90 downstairs.

Q. Are you sure of that? A. I'm not exactly positive. This is an approximation.

* * * * *

47 Q. That's what I'm asking you. Do you charge an admission at the door? A. Yes, we do.

* * * * *

60 Q.***

Do you provide a parking service for your patrons? A. No.

* * * * *

63 PHILLIP K. ROBINSON

* * * * *

69 CROSS EXAMINATION

BY MR. GREER:

* * * * *

Q. The types of nuisances to which the citizens complained. A. Well, they particularly complained of noise, nuisances are committed on their doorsteps, altercations on the streets, cars pulling back and forth with the cut-outs open. I would say they were the principal points.

* * * * *

72 VALERIE ROBERTS

took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

* * * * *

73 Q. Miss Roberts, where do you reside? A. 1829 Eastern Avenue, Silver Spring, Maryland.

* * * * *

Q. Are you familiar with the restaurant which is located at 3263 M Street, Northwest in Washington? A. Yes, I am.

Q. Do you patronize that restaurant during the year which began on February 1, 1965? A. Yes, I have.

Q. Where is your home originally? A. England.

Q. And how long have you been in the states? A. About 15 months now.

Q. When did you first start patronizing the restaurant? A. I've been going there just over the year now.

74 Q. When you visited the restaurant how many times would you say since you've commenced to visit the restaurant in the period of a month, how many times would you say you've visited it? A. Probably twice a week, maybe more.

Q. You are a regular? A. Yes.

Q. Have you made acquaintances with other people in the restaurant? A. Yes, I have.

Q. Have you ever recommended this restaurant to people? A. Oh, many times yes.

Q. On occasions when you have been there would you give us in your own words your description of the kind of clientele the restaurant has?

A. When I first started going there it was the Cous-Cous Restaurant and so then we had, maybe the older people and they were serving the meals only and they had the Latin American music. All that sort of thing.

* * * * *

75 Q. As someone who has come to America from England did you find this kind of music which is currently being featured at the Peppermint Lounge as something that was weird or as something that you had heard? A. No. This comes from England. That is the music I want to hear.

* * * * *

76 Q. On occasions when you've seen it over your numerous visits can you say you observed an operation of a restaurant which was orderly or disorderly? A. Orderly.

* * * * *

CROSS EXAMINATION

BY MR. NIBLACK:

Q. Miss Roberts, are you married? A. No, I'm not.

Q. How old are you? A. Twenty-one.

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CAPTAIN DAN B. KENNEDY

took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

Q. Captain Kennedy, would you identify yourself for the record?

A. Captain Dan B. Kennedy of the 7th Precinct.

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Q. Captain, amongst your many, many duties in this high priority precinct you have supervised or have supervisory responsibility, with regard to the 3200 block of M Street, is that correct? A. I do.

Q. Have you visited the premises 3263 M Street in the course of your police duties? A. I have on occasions.

Q. Do you know whether or not these occasions have included the period on or subsequent to February 1, 1965? A. I think before that date and since that date.

Q. On occasions when you have been on those premises on or before February 1, 1965, would you state for the purposes of this hearing whether you found the premises to be operated in an orderly condition? A. Yes, I found them to be operated in an orderly condition.

Q. In your capacity as the manager -- strike that please.

In your capacity as the Commanding Officer of the precinct in which the applicant licensee, in which the applicant's licensed premises are located, can you state to the Board whether or not the policy of Kaycee, Incorporated, with regard to requests emanating from your command has been cooperative or uncooperative? A. I would have to say they have been cooperative from all the information I've received from the men

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working there and from the instructions I've given to these people, they have been cooperative.

Q. Captain, do you recall personally the meeting at the Georgetown Inn of this group of businessmen to which Mr. Scheirer and Bomstein have testified while you've been seated here? A. Yes, I recall it.

Q. Do you recall whether there were 20 or more people present at that meeting? A. I would judge there were a few more than 20 people.

Q. Do you have a parking problem on M Street, Captain? A. I certainly do.

Q. Officers under your command, I take it, have to devote considerable amount of time to parking? A. Yes, they do.

Q. Can you say from your own experience with your men and from your personal knowledge of the area that the license in question, Kaycee, Incorporated, contributes to that parking problem more so than other licensed establishments in that community? A. No, I think the patrons there contribute to the parking problem but to what extent I can't say.

92 Q. And if I may be permitted to ask it in sequence, if not I'll stand on objections, would your answer be the same with regard to the establishment next door, namely, 3267 M Street, Northwest, Seabright Incorporated? A. I feel they also contribute to the problem but to what extent I could not say.

* * * * *

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CROSS EXAMINATION

BY MR. NIBLACK:

Q. Captain Kennedy, in regard to the parking problem on M Street, has this increased in the last two years? A. Yes, it has.

94 Q. Markedly so? A. Yes.

Q. Has an increase in Class "C" liquor licenses contributed to this problem? A. I would say it has, yes.

* * * * *

RECROSS EXAMINATION

BY MR. NIBLACK:

* * * *

97 Q. What area is parking problem probably most serious in the vicinity of the 3200 block of M Street, Northwest? A. Well, in the 3200 block of M Street, Northwest, it would be on M Street itself.

Q. In the vicinity, I should say north of Georgetown in the residential area? A. The area north of there I would say. It would extend
98 about lower P Street.

Q. How many blocks above Wisconsin Avenue is P? A. About five blocks more.

* * * *

EVERETT J. McDERMOTT

99 took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

* * * *

Q. Have you been on the premises involved in this case, 3263 M Street, Northwest? A. I have, yes.

Q. Do you know any of the persons who are actively connected with
100 the restaurant and the A.B.C. license there? A. I have known the President of the establishment since she was eight years old.

Q. That is Mrs. Ben Kahla who testified here today? A. That's right.

Q. And when she opened her restaurant did you come to observe it? A. Not immediately, but several months ago I decided I'd pay a visit up there.

Q. And on the evening when you came will you state from your personal observation, I might ask you for how long a period did you stay there on that occasion? A. I'd say approximately one hour.

Q. And would you indicate for our guidance what hours of the day that was? A. I'd say that was from 8:30 to 9:30 that evening.

Q. Do you recall the day of the week? A. It was a Friday night.

Q. And did you find the restaurant open when you arrived? A. Yes, I did.

Q. And will you, from your personal observations on the occasion that you recently visited, tell us whether you found the restaurant to be operated in an orderly or disorderly fashion? A. I found it to be operating in a very orderly fashion.

* * * * *

102 MR. NIBLACK: Madam Chairman, may we approach the bench.

THE CHAIRMAN: (Nodded in the affirmative)

(Counsels for the Applicant and Protestant approached the Board)

MR. NIBLACK: Madam Chairman, if you will excuse me I have evidence that in both those licensees premises in the men's room are prophylactic machines and machines dispensing certain types of creams which is supposed to delay orgasm in the women's room.

103 I felt because of the nature of this thing -- I had people in there last night who saw them and purchased them. If the Board please I'd like to enter these into evidence. If we can do it privately and see if Mr. O'Donnell will stipulate to the evidence that would be alright, if it please the Board.

* * * * *

106 MR. O'DONNELL: Do you object? I'm agreeing to stipulate.

THE CHAIRMAN: How do you wish to announce this?

MR. NIBLACK: I have a young couple, married, who went to both establishments last night. The gentleman visited the men's room and purchased two of these devices, one prophylactic and one of these things, and the lady went to the ladies room and used the machine. When they
107 went to the Corral the man went to the men's room and observed a prophylactic machine dispensing this cream. The lady went to the ladies room and observed a prophylactic machine. That's my proof.

MR. O'DONNELL: You want me to stipulate two in this stipulation for you. I would be glad to stipulate that.

* * * * *

108 MR. NIBLACK: We would like to evidence that the two things were purchased last night in the women's and men's room. Put that in evidence and we'll have no problems as long as I see the letter from the A.B.C. Board granting permission to sell this cream and these things.

MR. TYSON: I'm trying to read this thing. What does it say?

MR. NIBLACK: This is P-M Products, 1410 E. Washington, Indianapolis, Indiana 46201.

"Apply contents to area--excuse me Madam Chairman--"Apply contents to area of organ covered by foreskin and massage until ointment disappears. Wait 5 minutes before marital relations. De-La is intended to be used only as a desensitizing agent."

109 A place frequented by teenagers.

* * * * *

110 RALPH L. STEWART

took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

* * * * *

Q. And Mr. Stewart, what is your capacity with the Alcoholic Beverage Control Board for the District of Columbia? A. I am an investigator for the A. B. C. Board.

* * * * *

111 Q. Do you know the specific dates upon which you inspected the premises of Kaycee, Incorporated as an official inspector for the Board in that period? A. On the fifth month, twenty-second day, '65, and fifth month, twenty-eight day -- sixth month on the twenty-second day.

Q. Mr. Stewart, on any of those occasions prior to going to the premises did you personally alert the operator that they were about to

be inspected or was your visit at the premises unannounced? A. Unannounced.

Q. Now, on any of those occasions, will you tell us what observations you made as to whether the premises in question were being conducted in an orderly or disorderly fashion? A. Well, at the time I inspected these premises -- Normally the night inspections that were made would reflect the question you're asking. Some of our night inspections -- At the night observations that we have made and I have made because those are done by appointment, the place was very orderly,
 112 under proper supervision and checking for ages of minors, checking after they came into the restaurant.

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113

CROSS EXAMINATION

BY MR. NIBLACK:

Q. Mr. Stewart, I notice on two occasions you inspected the Peppermint Lounge, Kaycee, Incorporated on May 28th you stated they served 30 meals daily and on June 22nd you stated they served 35 meals daily. On what information did you base this report on? A. What information I based that report on? On information from Mr. Byrd.

* * * * *

MR. O'DONNELL:***

REDIRECT EXAMINATION

BY MR. O'DONNELL:

114

Q. And except for the question put to you by Counsel with respect to numbers of meals would you tell us whether or not your answers to the questions with regard to Seabright would be the same as the answers you have given with regard to Kaycee, Incorporated? A. Yes, they would be.

* * * * *

RECROSS EXAMINATION

BY MR. NIBLACK:

Q. How many times did you inspect Seabright during 1965, since February 1? A. Twice.

* * * * *

MOULDI BERGAOUI

115

took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

* * * * *

Q. What is your profession or occupation? A. I work for Voice of America, I'm an announcer at Voice of America.

Q. You are an announcer for the Voice of America?

116

A. Yes.

* * * * *

117

Q. Is the restaurant as it is being operated today and as you have seen it this year in 1965, a place that you would recommend continually to bring your friends from around the world who are here to see America?

A. Yes. That's the only place I know to take my friends.

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118

MR. NIBLACK: May we approach the bench?

THE CHAIRMAN: Yes.

(Counsels approached the bench)

MR. NIBLACK: At this time I would offer into evidence under the circumstances previously stated in the last bench conference these two parcels. Let the record show that these parcels, one containing a prophylactic and one containing cream described to you which were purchased in the Peppermint Lounge yesterday, I believe, Monday, December -- No, November 24th between 9:30 and 10:00. I would stipulate that this letter goes into the record, this memoranda concerning prophylactic vending machines. I would note for the record that this memoranda makes no note of this type of cream. Let these be entered in the record as Defendant's Exhibit 4 and 5.

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MR. O'DONNELL: As I am not an expert in the field, I defer.

THE CHAIRMAN: We will stipulate to this much and let it cover the subject.

June 29, 1965

MEMORANDUM TO: Inspection Department
 SUBJECT: Prophylactic Vending Machines

Recently, the Board has met with certain businessmen who handle prophylactic vending machines. They informed the Board that various Class "C" licensees have been directed by the Inspection Department to remove said machines, inasmuch as they constituted another business, not one incidental to the operation of a bona fide restaurant in accordance with Section 3(n) of the Alcoholic Beverage Control Act.

It appears that several years ago an opinion was rendered by the Corporation Counsel stating that the presence of prophylactic vending machines in the District of Columbia was not authorized. This decision was not based upon Section 3(n) of the Alcoholic Beverage Control Act but upon the then prevailing public policy that the use of contraceptives was illegal. In fact, it was in direct conflict with a statute of Congress. This statute, however, is not to be found in the latest edition of the U. S. Code. Also, it is to be noted that public policy has changed, as is evident from a recent decision of the U. S. Supreme Court, from the D. C. birth control programs, from television programs concerning venereal disease, etc.

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In view of the recent trends and of the serious venereal disease problem in the District, the Board has reconsidered its policy in reference to the installation of such machines on licensed premises. It is the view of the Board that such machines may make a substantial contribution to public health. Furthermore, in light of the nominal income to be derived by a licensee from said machines, the Board believes that even if the vending of prophylactics can be considered another business, it is so minimal as to be not a violation of Section 3(n) of the Act.

Therefore, their introduction on licensed premises will not, henceforth, be prohibited.

ALCOHOLIC BEVERAGE CONTROL BOARD
 IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson

/s/ James G. Tyson

/s/ Louis N. Nichols

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122

DON V. HARRIS, JR.

took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NIBLACK:

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Q. Mr. Harris, could you give your name and address and occupation for the record please? A. Don V. Harris, Jr., 3330 N, as in Nellie, N Street, Northwest and I'm a lawyer.

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Q. Mr. Harris, could you describe vandalism which has taken place on your property? A. I have a long, sad list starting with the first day of this fiscal year we are talking about.

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THE WITNESS: Right, everything has taken place in my house during the period starting February 1 of this year.

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THE WITNESS: On February 1 we had a brick thrown through the front window, the front window is the dining room, a brick can do an astonishing amount of damage when it bounces through a storm window and breaks out the regular windows gouging a serving table and it gouged the dining room table and broke a Steuben candelabrum.

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THE WITNESS: A brick through the garage door window. I have had to have firemen out in front of my house. I've had the front step light knocked out. I've had two panes of glass in the third floor front window knocked out. All of the bushes, not all but some of the bushes and hedge plants around the front of the house broken and I have had the front light stolen. Of these events one, two, three, four, five and I'm giving the specific dates they all took place on Saturday night. In particular the pellet gun, the front lights being kicked out and I think a brick through the garage door, although I didn't keep my records that carefully in the early days, all happened on Saturday night. The front light was stolen on Sunday night and only one event occurred not on a weekend which was the first one

February 1 was a Monday.

BY MR. NIBLACK:

Q. Mr. Harris, could you tell us what may have led you to believe that -- what makes you believe the pertinence of these incidents to the places of question? A. On Saturday --

MR. O'DONNELL: Objection. I think these questions should be properly asked such as what personal knowledge, not what leads you to believe.

127 THE CHAIRMAN: The objection is well taken.

BY MR. NIBLACK:

Q. What personal knowledge do you have Mr. Harris? A. Personal knowledge I have is what happened on a Saturday night in front of my house starting about seven o'clock in the evening. At that time you will find that there is a large influx of automobiles and a lot of horn honking and a lot of noisy people trying to park. When they find a place to park, of my own personal observations, I see them heading south downhill to one of the establishments on M Street. Which one of the establishments on M Street they go into I cannot establish but they do go to M Street because about eleven o'clock to twelve o'clock Saturday night I could stand out there and hear them coming back, the same people, the same automobiles this time coming from the south. The condition of the people when they return is somewhat more exuberant than when they went downhill. I think there is very little room for doubt that the damage that is being caused, to my house on a Saturday night, is caused by these people.

Q. What generally is the age group of these people if you noticed?

A. That's difficult. Most of them are young I suppose teens and twenties.

* * * *

128

CROSS EXAMINATION

BY MR. O'DONNELL:

* * * *

Q. How long have you lived in Georgetown? A. Nineteen years.
My vandalism started on February 1, 1965.

Q. Do you have a good relationship with your neighbors? A. Yes.

Q. Are there any children in your neighborhood? A. There are a number of children. Most of them preteenage. The only one I can recall off hand who is a teenager is a girl.

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130

CAPTAIN DAN B. KENNEDY

took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NIBLACK:

Q. Within the last two years has there been a significant growth in the crime rate in Number 7 Precinct? A. Yes, there has.

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Q. Are you familiar with the type of operation that they carry on, the entertainment offered and that sort of thing? A. Yes, I am.

Q. Would you state the majority of their patrons are people under 25 years old from your personal observation? A. I would say from my observation and my observations have been made on Friday and Saturday nights, that they range from about 18 to 25.

Q. Is it true, Captain Kennedy, that you have requested other divisions of the Metropolitan Police Department to make periodic visits to these establishments? A. Yes, I have.

Q. Would that include the Narcotics Squad? A. Yes.

Q. Would that include the Morals Squad? A. Yes.

Q. Would that include the Woman's Bureau? A. Yes.

132

Q. Would that include the Youth Aid Division? A. Yes.

Q. Captain Kennedy, do you feel that the type of clientele attracted to these two restaurants before the Board today are a major cause of your problems -- I may have stated that before but go ahead and answer the question. A. I think that they are a major cause of the problems I have in connection with complaints of residents of depredation of property, the throwing of beer cans in the yards, loud obscene conduct and parking problems.

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133

BY MR. NIBLACK:

Q. Do you have statistics of arrests in the area of the 3200 block of M Street and the surrounding area? A. I do.

Q. Would you give the Board those statistics? A. I have here a comparison of some arrests taken during the month of June and July, '64, comparing those two months with the month of June and July in '65 and the arrests are within the area from Wisconsin Avenue to 35th Street, from M Street one block north and one block south between the hours of 6:00 P.M. and 3:00 A.M.

Now, in the offenses of disorderly conduct in 1964 in that area we had 29 arrests. In 1965 we had 43.

In drunk cases we had in '64, 51 arrests. In '65, 66 arrests.

For urinating in public in '64, 2. In '65, 31.

134

Drinking in public in '64, 2. In '65, 7.

Peeping tom, 1 in '64 and 1 in '65.

Felonies, 1 in '64 and 4 in '65.

Assaults, 1 in '64 and 1 in '65.

Depositing trash upon the streets, 1 in '64 and 2 in '65. These total 88 arrests in '64 and 139 in '65. Now that's an increase of about 57.8%. In the 3200 block of M Street in 1964 the months of June and July from 6 to 3 A.M. we had 21 arrests for disorderly conduct, 28 arrests for drunkenness. In '65 for the same two months the same hours, 12 arrests for disorderly conduct, 29 for intoxication and 11 for urinating in public, 2 assaults with a dangerous weapon, 1 carrying a dangerous weapon and 1 drinking in public; for a total of 56 compared with a total of 49 for the previous year.

* * * * *

Q. Could you describe some of your traffic problems in that area?

A. Well on Friday and Saturday night in particular the traffic in Georgetown, especially on M Street and Wisconsin Avenue, is very heavy, very congested and slow moving.

Q.***

How about parking? A. Parking creates a major problem. We have received complaints frequently on the parking situation and on Friday and Saturday nights we have three cranes that come into Number 7 Precinct to remove cars that are parked so as to create a hazard to other cars or to pedestrians and remove cars that may block the entrance to the alleys and not permit fire apparatus to go into the alley and as a general average I might say that we would remove possibly 35 cars on those two nights and that right up--it might run up as high as 50 and we find that as we remove these cars out immediately the spaces are taken by another car.

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136

CROSS EXAMINATION

BY MR. O'DONNELL:

Q. Yes, I have a couple of questions.

Captain, is there any particular reason or method for your selection of that particular period for comparison? A. The months were picked at random.

Q. Did you select them? A. Yes, I did.

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138

Q. Now, you have described for us what we are willing to stipulate is congested traffic conditions on weekends in Georgetown. Captain are you prepared to state that Kaycee, Incorporated and Seabright, Incorporated contribute to those traffic problems any more than do the many other licensed restaurants on M Street? A. I would think that they all contributed. Those who have the largest crowds contribute the most.

Q. Well, based upon your observations and your experience would you state that the Kaycee, Incorporated, just taking one at a time, Kaycee, Incorporated contributes significantly more than other licensees on M Street? A. The times that I have been in the Kaycee, Incorporated it has been crowded. It has been filled up. I've seen patrons lined up on the outside who enter the Kaycee, Incorporated and I think they do draw good

crowds on Friday and Saturday nights and subsequently I do believe that they would contribute to the traffic situation and to the parking situation.

* * * * *

139 Q. And in the area of all of the problems which you have described, when you have sought or your command has sought the cooperation of Kaycee, Incorporated and Seabright, Incorporated have they given you the measure of cooperation that is within their control? A. Well I found them very cooperative when I get complaints about their establishments I get -- usually get there -- I usually get in touch or have a lieutenant get in touch with them and they have always done what was asked of them to do.

Q. Is this problem of intoxication in the streets of Georgetown confined to the young? A. I think the majority of it is, yes, but not all of it.

* * * * *

140 REDIRECT EXAMINATION

BY MR. NIBLACK:

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141 Q. Tell me Captain in your experience do the patrons of Kaycee and Seabright stand outside on the sidewalk and create an obstruction problem there? A. They have stood out on the sidewalk but we have two officers assigned in the 3200 block of M Street and we try to get them up against the building and leave the sidewalk open for pedestrians. We asked the management to assist us in keeping the sidewalk clear and they have done that with some of their employees.

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Q. And also another question, are your remarks about the large crowd at Kaycee also applicable to Seabright relatively? A. Yes, they are.

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142 THE WITNESS: Well, it would be drinking in an automobile out on public space in those cases. Now, I might say this to you that we try to establish from some of these persons who were arrested exactly where

they have been and the places they have been. The replies we get are, they've been in several places in Georgetown or we've been in some other part of town and just came over to see what was doing and we haven't reached an establishment yet and we were unable to get information from these arrestees as to where they had been specifically. They don't say. They've been in one place or another. They say they've been in several places.

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143

LIEUTENANT DWAYNE A. CHERRY

took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

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DIRECT EXAMINATION

BY MR. BEVERIDGE:

Q. Would you please state your name, rank and duty assignment?

A. My name is Dwayne A. Cherry, Lieutenant, Metropolitan Police Department, assigned to the 7th Precinct.

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Q. In the course of your duties with the 7th Precinct have you personally observed the 3200 block of M Street? A. I have.

Q. And can you relate to the Board Lieutenant, from your own knowledge any act of rowdyism or vandalism which occurred in or around the 3200 block of M Street? A. I can, yes.

I'm sure you realize that when a Captain is not on duty his position is filled by a Lieutenant. I happen to be one of four Lieutenants who fill that capacity. While filling this position I have received numerous complaints from residents in that vicinity. I have personally responded to each and every one as well as I possibly could, to go down in that area and see just what the trouble happened to be. I've had complaints and answered complaints of depredation committed to private property. I've had complaints of urinating in public. I've had complaints of prowlers in the rear yard of the premises. I've had complaints of fights in the area. I have had complaints of scaling of private property over fences onto private property

and committing depredation therein. I have had complaints of indecent sex acts being committed in parked automobiles in that vicinity. I have had many, many complaints of illegal parked vehicles in this vicinity. I have personally supervised while I was on duty in this area myself by being present there and observing some of these--I never observed the acts, of course. I've always unfortunately been there after they've been committed but have never been fortunate enough to be present when these depredations or these acts were committed, therefore, I have an irate group to contend with ordinarily when I arrive on the scene.

To my knowledge there has been a report submitted by me on one instance of a drunk arrest made in that vicinity by a young man under the age of 21. As far as arrests in the licensed premises are concerned, no. I've been in licensed premises very few times since I've been assigned to the 7th Precinct. I know Mr. Byrd. I've been in his establishment. I have been in the door numerous times. I've spoken to him about congestion on the sidewalk in the area adjacent to the address of the premises. I've spoken to him about the noise created by his combo or his musical organization. I believe I have spoken to him about painting the glass on the front of his premises, to all of which Mr. Byrd has been very cooperative. As to the other licensed establishment under discussion today, I have never been in there and have no knowledge of their operation. I do know that the atmosphere created by the type of music that's conducted on the premises seems to stimulate a certain segment of our society who are drawn to these establishments and create indirectly a police problem, blocking the sidewalks and, of course, not to hackney the situation, the parking is intolerable during the weekend. Of course specifically during the weekends. There is no such thing as legal parking available. And that is, I believe, the record would show that. The Captain has already mentioned it and as fast as our cranes can tow illegally parked automobiles to permit egress and ingress to the alleys to fire apparatus, another vehicle is very callously driven into and takes the spot just vacated and it parks illegally. It is somewhat like trying to keep the river away from the shore with a broom.

It just can't be done, that is with our personnel.

Q. ***

Do you believe the establishments in the 3200 block of M Street or patrons I should say, are contributing to this disorder that you've just described?

147 A. I will say that they contribute. Certainly they contribute their share, yes.

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PRIVATE ROBERT J. SNYDER

took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BEVERIDGE:

Q. Officer Snyder, please give us your name, rank and duty assignment. A. Private Robert J. Snyder, Metropolitan Police Department, attached to Number 7 for the past 20 years.

Q. Are you on any particular shift Officer Snyder? A. I haul three shifts on M Street.

Q. Now, in the course of your duties do you have occasion to patrol the 3200 block of M Street? A. I do, sir.

148 Q. And during the course of your patrol of the 3200 block of M Street can you remember any recent arrests you have made there? A. In the past two months I have made -- I have arrested 4 people in the 3200 block of M Street, two for urinating in public and one for drunk and one for disorderly conduct which constituted cursing.

Q. Do you have any information, as a result of these arrests, which would indicate that the arrestees were patrons of either of the establishments here before the Board? A. Two of the gentlemen and the one for drunk and the one for disorderly conduct was from the Crazy Horse. The other two told me they had just come out of the Corral and could not use the toilet.

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Q. Officer, you indicated that two of the arrestees told you that they had come from the Corral. Did they indicate what they were doing?

149 A. Well, they told me they couldn't get into the rest room.

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MR. TYSON: I take it that -- what were these persons charged with, both of them?

THE WITNESS: Urinating in public, sir. Right across the street.

MR. TYSON: This is from the Peppermint Lounge or Peppermint -- or whatever it was?

THE WITNESS: From the Corral, sir. They had just came out of it. They are right next door to one another.

MR. TYSON: How far is that from Wisconsin Avenue?

THE WITNESS: That would be a distance of approximately one block.

MR. TYSON: Is this in the area where it is claimed that some people are going up and down the streets?

THE WITNESS: Quite a few, sir.

MR. TYSON: Is it right in the street?

THE WITNESS: That is right, sir.

150 MR. TYSON: Did you take them back to the Corral to ask any questions there whether or not they had been served there?

THE WITNESS: I did not, sir. I just locked them up.
(Laughter)

MR. TYSON: Did you talk with anybody at the Corral?

THE WITNESS: I did not, sir. The place was closed.

MR. O'DONNELL: Pardon?

THE WITNESS: The place was closed.

MR. TYSON: What time did you lock these people up?

THE WITNESS: A little after 2:00 o'clock.

MR. TYSON: I have nothing further.

BY MR. BEVERIDGE:

Q. Officer let me ask you, from your own personal experience do

you make more arrests in the 3200 block of M Street than any other block in Georgetown? A. I certainly do.

Q. Would you say, Officer, that the 3200 block of M Street is especially crowded and congested on weekend evenings? A. It certainly is. I can talk about Friday but Saturday is my day off so I cannot say anything about Saturday.

Q. In your opinion, in your knowledge, is it so congested that pedestrians could not pass on the sidewalk unless you were to ask people congregating in the 3200 block of M Street to keep moving? A. Up until
151 the window was painted, the sidewalk was blocked and you always had to move everybody all during the evening.

Q. When you say the window was painted, what window was painted?
A. The window at the Corral and the Kaycee.

Q. And was there any particular reason people were congregating in front of these establishments? A. Yes, sir, to watch the dancers through the window.

Q. The dancers were in the Peppermint Lounge? A. Inside both of them, sir.

Q. What were those dancers? A. They were in bikini's doing this new modern dance. I don't know what you call it.

Q. Directing your attention specifically to both the Corral and the Peppermint Lounge have you on occasion asked them to cease certain activities? A. On numerous occasions I have talked to them about closing the door, that is the front door facing M Street on account of the noise which I've received complaints on. When the door is open you can hear the noise all the way to K Street which is two blocks away.

Q. About how many times, taking them one at a time, first the Corral say since May, would you estimate how many times have you asked them
152 to close the door? A. I would say in the past year at least 25 times.

Q. And as to the Peppermint Lounge would you -- A. Not as many.

Q. Not as many but still about ten times? A. When Mr. Byrd has

been there and I told him about it he saw that the door was closed. But I didn't get much cooperation from the rest.

Q. Officer, have you noticed an increase in parking violations in and around the 3200 block? A. Very much so. In fact, you can't even find an illegal place to park.

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155 CAPTAIN PETER BELIN

156 took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NIBLACK:

Q. Captain, could you state for the record your name and address?

A. My name is Peter Belin, U. S. Navy Retired. My address is 1623 28th Street, Northwest.

* * * * *

Q. What is your position? A. I am President of the Citizens Association of Georgetown.

* * * * *

Q. Captain, could you state your views on the establishments now before the Board?

MR. O'DONNELL: Objection.

THE CHAIRMAN: On what grounds?

MR. O'DONNELL: He may agree with Queen Elizabeth that the Beatles should be knighted. Such a broad question should be related to
157 the orderliness or disorderliness of some specific, unlawful or unseemingly problem.

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THE WITNESS:***

I would begin by saying that it is my personal view that the problem we are here studying and urging you to deny renewal of license for, became a problem for Georgetown approximately in the month of January, 1964.

In any event it has certainly been aggravated since the arrival specifically in the 3200 block of M Street, Mary Street, during the calendar year of 1965. I am here protesting and urging you to deny this renewal as a person, as a resident, as a homeowner in Georgetown. I am also here as a servant and part spokesman for an association having over 1750 paid-up homeowners and residents in the area affected by the activities we believe of this establishment, these two establishments.

158 Speaking for them I would be brief and I will simply say that I base my comment, my urging that you deny this renewal on the basis of nuisances, noise and crime.

* * * * *

159 My personal observation of the cases we are here today considering is from very frequent and I would say averaging at least two visits per week during the calendar year up and down M Street from the 28th to the Key Bridge end. It is my personal observation that the great number, the greatest numbers of people in crowds on the sidewalk are directly outside of the establishments that we are considering today. We have heard testimony as to the nuisance that this causes. You have also heard testimony as to the noise that is created and we believe largely by the crowds in the Peppermint Lounge and the Corral; of young people drinking in their cars at late hours of the night - early hours of the morning, except Sunday. These, it seems to me, Madam Chairman, can be equated to no other establishments than those who cater to what has been described here as rock and roll, the Watusi and et cetera. However enthusiastic they may be for this type of entertainment it is my belief it is unfair and very unfortunate that the resulting effect must be on the neighbors living in the residential area adjacent to the property line of the two establishments we are considering today.

MR. NIBLACK: I have no further questions.

CROSS EXAMINATION

BY MR. O'DONNELL:

* * * * *

161 Q. I would like to know did the Citizens Association of Georgetown,
 162 did they circulate in the Georgetown area a written communication about
 objections to the two licensees in question today among people in George-
 town prior to this hearing? A. We have a membership list, as I have
 said, of approximately 1,789 paid-up members to which we do address
 association material.

Q. Did you address a particular letter on or about November 18th
 to citizens of the association on the subject to which I have just made
 reference? A. Yes.

Q. Was it addressed to the public at large or just to the members
 of the association? A. It was addressed to the membership of the
 association.

Q. Did -- unfortunately I do not have your communication but did
 this communication use the expression, "Rotten apples", to describe my
 clients establishments? A. I believe it did.

* * * * *

163 Q. Now, in fairness, was this communication that you have just now
 testified to as being sent to the members of the Georgetown Citizens
 Association sent to a member of this Board at his place of residence?
 A. I told you that it was sent to, I believe it was sent to the total member-
 ship.

Q. Is a member of this Board currently a member of your associa-
 tion? A. I think that is correct.

Q. And you don't consider this to be an ex parte communication?
 A. I'm not a lawyer, Mr. O'Donnell.

* * * * *

164 POLLY SHACKLETON
 took the witness stand, for and in behalf of the Protestants, and having
 been first duly sworn, was examined and testified as follows:

* * * * *

168 ALVIN HARPER
 took the witness stand, for and in behalf of the Protestants, and having

been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NIBLACK:

Q. Mr. Harper, could you state your name and address for the record please? A. Alvin Harper, 1219 35th Street, Northwest.

Q. Mr. Harper, you and your wife participated in gathering signatures in opposition to the restaurant establishments before the Board?

A. That's correct.

Q. Approximately how many signatures did you and your wife gather? A. On one of the petitions it was 70, on the other one it was somewhere around 68 or something like that.

Q. How many refusals did you encounter? A. My wife had one refusal. It was from a girl who worked in one of the rotten apples in Georgetown. I had three refusals. One was a group of girls who had just moved into Georgetown. They were from a foreign country. They didn't understand what was going on. The other was a new resident in Georgetown, and she said I've never been to the places, never heard of them, I don't feel I should oppose. The other was from a -- what I would consider a sort of beatnik-type of girl and --

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Q. You have witnessed and been a part or a victim of a number of incidents of vandalism?

170 A. Could I say one other thing? In my going around, both my wife going around and I observing or I should say obtaining these petitions in opposition to your establishments I found that young and old were very much opposed to the problem that we have in Georgetown on M Street and that I found that everyone greeted with open hands and arms or whatever you want to say, the signing of this petition, due to the fact that these places are run in such a disorderly manner by permitting people to spill onto the street and I found this to be true throughout the whole area that I canvassed.

Q. As I said before, you have been a witness to and a victim of a number of incidents: Could you tell the Board some of these incidents that have happened? A. These incidents that have happened that I have experienced have been primarily from the patrons, on two occasions I have heard the name of the Corral.

MR. O'DONNELL: Objection.

THE CHAIRMAN: The objection is sustained.

* * * * *

171 THE WITNESS: Well, I wonder about them because, well, anyway in getting out of their cars and going to their cars late in the evening why I hear various names of bars and or Class "C", I think you call them, being used. They have either come from that place or they have not. On two occasions in the last year I have heard the Corral mentioned, not the Peppermint Lounge.

Q. Can you relate any specific instances of vandalism? A. Yes. In our particular block these patrons are wrecking the neighborhood. Not only that there's been -- when I say wrecking I mean like one of my neighbors fence has been ripped out three times, the same fence. I've had my fence damaged which is an iron fence. Another neighbor had his fence, which is wood and brick ripped down. We are constantly faced with a most obscene, vulgar, gutter language that is possible by these patrons.

Last night, for example, I was up three times. They were stealing -- it was either last night or the night before I was up three times from the hour of 11:45 to 12:30 or something like that from patrons of these establishments. They were drunk and one group was stealing hub caps. I reported this to Number 7.

172 Constantly we have had fights from the patrons of these bars. I never thought I would see a policeman pull a pistol on one of the big fights we have had.

We had on August, I have the dates here, when the police apprehended this guy and he pulled a pistol on him and there was so much confusion one of the people that were parking, the other gang was attacking, and the other

group had gone down to another bar to get re-enforcements. This kind of thing these places have created. The owner of the Peppermint Lounge goes home, wherever he lives and goes to bed and gets a nice quiet sleep while all the rest of the residents in Georgetown are left fighting the damnation these establishments force us to live in until three, four o'clock in the morning.

MR. NIBLACK: No further questions.

* * * * *

175

SAMUEL M. LEVY

took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BEVERIDGE:

Q. Mr. Levy, would you please state your name and residence?

A. Samuel M. Levy. I reside at 3245 N Street, Northwest.

Q. Where does that put your residence in relation to the two applicants before the Board? A. I'm exactly two blocks north of the establishments you are referring to.

Q. Do you operate a business in Georgetown? A. Yes, I do.

Q. Where is that? A. I operate David Richards Men Shop at 3059 M Street and I have done so for the past 34 years.

Q. And how long have you been a resident of Georgetown? A. I've been a resident of Georgetown for a little better than 52 years.

* * * * *

176

Q. Now, do you know of any acts of vandalism that have occurred, let's say take the 3200 block of M Street, vandalism or rowdyism? A. That was brought on very vividly to me about six weeks ago. This was on a Saturday night and I was walking with my brother-in-law from my home and I was -- I heard there was so much happening in that 3200 block I was just curious to see the type of action going on that particular night because I am interested in the area. I walked down on M Street and as I got to the 3200 block, as I got in front of the Peppermint Lounge and the

Corral my attention was directed to a fight that was going on right in the middle of the street. There were two young men fighting with one man down on the pavement, on the street. The other man was actually kicking him with his feet. I was horrified. In an instant a policeman rushed right over to him. I thought he was going to grab the man who was going to do the kicking because it happened so fast, this fight. He was very observant and he grabbed the man on the ground who had a pistol and he disarmed him and helped him and immediately they hauled him into the patrol wagon. Again, that's the first incident that I have ever seen occur on that particular block, personally. I've heard a lot of stories. Then the weight of it was brought home to me. For quite a while I sort of scuffed some of these stories off and thought of them as being sort of exaggerated because being down in the 3000 block where my business is I haven't encountered any of this. I thought some of these stories were definitely blown up beyond proportion.

178 A week later, a Saturday afternoon about five weeks ago I'd say, in the 3200 block of N Street where I live I have parking for four cars available to me right behind my home and the entrance to this is from Potomac Street right above N. I came home with my wife about five after twelve on a Saturday night and as I drove up the alley right to the top of the entrance to where my home is there was a car parked on my particular lot. There were four young men standing there and three of them were in the process of relieving themselves. I was astonished. Something like this never occurred around my particular area before. When I say relieving, pardon me if I'm not more explicit about this but I mean they had no shame whatsoever. They didn't try to shield themselves at all because my lights were right upon these three young men and it even shocked me because my wife was sitting in the car with me. The first thing that entered my mind was suppose my wife had been coming home by herself in the car and seen this. She probably would have gotten hysterical. I left my car parked in the alley and blocked their exit and I went in and called Number 7 immediately. Within less than 5 minutes there was a police car there.

Meanwhile I looked out the rear window, bedroom window and I saw two of the young men trying to move it. So, I have an intercom system in my house and I spoke to them and told them they better get out of the car because an officer would be there very shortly. When the officer came --
179 when the officer arrived I came out into the back entrance and I was there with the officer and the officer was questioning them at that time and he asked them where they came from. One of the boys answered, he said they had been down on M Street at the Corral.

MR. O'DONNELL: I'm going to object to his testimony for the same reason as heretofore stated.

THE WITNESS: Anyhow, the officer asked how come he didn't relieve himself at the place he had been to and he said it was so crowded he couldn't get in there and the officer asked me if I wanted to charge him, swear out a warrant for indecent exposure and I said no I didn't want to do that. However, I thought they should be reprimanded in some manner. The officer said, "Well, they are parking on private property. I can give them a ticket for that and if they have to appear in court you will have to testify," and I said, "I'll be glad to do it because I do feel them being young fellows that they shouldn't have such a serious thing as indecent exposure on their records." The officer took them in and that was the last I heard of that incident.

Q. I have one more question, Mr. Levy.

As a businessman on M Street have you noticed any deterioration in the business area of M Street and I'm speaking particularly and trying to keep this around the 3200 block of M Street?

180 A. I can honestly state this. It so happens that besides being a resident and businessman in Georgetown I own considerable amounts of commercial property on M Street and some on Wisconsin Avenue. Now, there was a time in the -- not too long ago that if there was a vacancy that occurred and we advertised it we were immediately swamped with requests for rental. You would run an ad in the paper and immediately the place was rented. This is contrary now. I know we have one place

that is vacant and we are starting to fix it up now. We have ran some ads on it and the first thing you do when you tell them it is on M Street they are afraid and they say no they don't want anything on M Street right now and this is contrary to - pardon me - what would happen, I would say as recent as nine months ago or a year ago and in my personal observation I know of about five places that are vacant right now and have been vacant for a number of months and before you couldn't find a place empty for five months on M Street.

CROSS EXAMINATION

BY MR. O'DONNELL:

* * * * *

181 Q. Do you have any property interest in the property that houses
the Scarlet Garter?

182 A. Yes, sir.

Q. Is that a class "C" establishment? A. Yes, sir I think it is.

Q. Do they have entertainment? A. Last time I was in there,
eight months ago, they did have music, no dancing.

Q. Do you consider that to be a fit use of your property? A.
Pardon me? I didn't understand your question.

Q. Do you consider that to be a fit use of your property? A. To
explicitly answer your question at the time I rented the place to the Scar-
let Garter, which was better than two years ago, I thought nothing of it
and I am in the position now where I want to protect my property in George-
town and if I had the place to rent today if the place was empty I would not
rent to the Scarlet Garter today. I could assure you that or any Class "C"
restaurant.

* * * * *

184

HERBERT KUNDE

took the witness stand, for and in behalf of the Protestants, and having
been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. NIBLACK:

Q. Mr. Kunde, could you state your name and address please for
 185 the record? A. Yes, it is Herbert Kunde, 1220 Potomac Street, North-
 west.

Q. Mr. Kunde, you live in a very close proximity to the two res-
 taurants whose applications are before the Board today? A. That is
 right.

* * * * *

Q. Mr. Kunde, could you tell the Board some incidents that have
 happened in your area generally and some of the general problems in
 your immediate area? A. I'll try to confine them to those other than
 the ones I think you have amply discussed, of incidents that have occur-
 red, that have been cited after the fire. But I have witnessed on many
 occasions the groups and individuals who careen around the corners of
 M Street and come up north on M and are drunk. These are young men,
 in some cases accompanied by young ladies. I've seen this since Febru-
 ary this development of more unattached young girls parading the street.
 More than one would care to see. This is a fairly recent development in
 the area. I have seen these things. I have seen the instances of urination
 in the Texaco garage on the corner which is a terrific place on the corner
 of M and Potomac. Cars are parked in there and this seems to be a con-
 venient public urinal. I've seen this happen there. I've seen urination
 take place on private property at 1211 Potomac across the way, the west
 side of Potomac. I've seen it in the open alley and this is all within public
 view except for being screened by an automobile at the Texaco garage.
 I've seen it up Prospect corner of Prospect and Potomac and I have wit-
 nessed it in my own patio.

I have seen boys tipping over or trying to wrench out or tip over
 bus parking signs right at the corner of Potomac and bent it down but
 weren't successful in dislocating it entirely and I've seen cars parked on
 the ramp sidewalk ramp of the Texaco station, the sidewalk -- You have
 to walk past the station and there is a sidewalk ramp. Cars pull up on
 that and perhaps since February I've seen three or four parked right

across the sidewalk which means the pedestrians cannot do anything but walk in the street to get to the mailbox which is a habit of some of us. We try to avoid it on Friday and Saturday nights, to avoid mailing our letters.

187

These are a few of the episodes that have happened and in addition, you find that beer or whatever it is makes some of these young men fairly belligerent because this is now about a month ago I heard some wailing, shouting and scuffling across from our house on Potomac Street, west I guess if my compass is right, there were four young lads after another one sort of dragging him along. I went out to see what was going on. The boy they were scrambling with escaped up the street whereupon I was standing on the corner of Prospect and Potomac, north corner, whereupon these four got out, came across the street and said, "Old man what are you doing there." I said, "I think I have a right to stand on the corner." I lost my hat in the process. The leader of the group said, "You just shake hands with me Mister or you'll get beaten up." I refused to shake hands with him and the conversation was interrupted by a little Volks that was trying to park illegally on the corner of Prospect and a number of people passing by. The three companions deserted him and the fellow who threatened me said no more and he went off.

The thirteenth of November, that was a Saturday, at two o'clock in the morning, 2 a.m., my wife and I was wakened up by a lot of pounding. We have a door knocker and there was a loud pounding and shaking of the door. I went downstairs to see what was happening and when I arrived I saw in the distance a figure disappearing, skulking off. It was that same evening, same day, 9:30, about that, we did keep a record of the time, when there came another knocking on the door and a terrific banging. I said, "Gee, we're not expecting anyone tonight." So, I went out the back door through our patio and came around. Just as I got to the patio door it was flung open and a youth reeled in and just in time for me to be able to push him out and he went out quickly into the arms of a companion. Then he tried to get away from him. He said, "Even when I'm drunk no

one can treat me this way." His companion refrained him and they went off down the street.

Now, these are just a few illustrations of the reasons why last summer about 12 residents of Potomac and Prospect which is near Potomac, got together and hired a private patrolman to patrol our area. I think you'll recall reading about that because the newsmen were interested. These are some of the reasons why we hired a private patrolman for Potomac and Prospect Street.

* * * * *

191 MR. NIBLACK: No further questions.

That concludes our case in the Kaycee case, Madam Chairman. I would like to state at this time that most of the testimony we have heard would apply also to the Corral case coming up. One thing I would ask Madam Chairman, there are some things in the record of the establishment here before us that I'm not sure of the ruling of the Board. I think
192 they are in the 1965 record, is that a part of the record, and does that take the consideration of the Board, if not do you have to read the contents of that into the record.

THE CHAIRMAN: Are you referring to the inspector's report?

MR. NIBLACK: The inspector's reports and I think some police reports concerning the Peppermint Lounge in relation to incidents.

THE CHAIRMAN: Everything in the Board's own files for the current license year is a matter of record and will be considered by the Board.

* * * * *

193 MR. NIBLACK: I could have gotten him and for purposes of rapidity and a speedy determination of this I would simply bring this to the Board's attention and also bring to the Board's attention the inspector's report, detailed inspector's report that took place in the Corral I believe, and it indicated there that, I think it took place February 3rd, 4th, 5th and 6th, and at that time I think it indicated there that the food sales on these days, detailed inspections by Mr. or Inspector Tucker that food sales, for

example, in the Corral on the 3rd were \$20.80, beverages sold \$276.75. On the 4th food sales were \$18.80, beer and spirits \$271.95. On the 5th food sales were \$16.15, beer and spirits \$498.60. On the 6th, food sold was \$61.70, spirits and beer \$316.95. The items served were sandwiches and that sort of thing. It didn't strike me as being the type of things restaurants should serve under the statute. Other than that, I think that concludes our case. I think we can go on to the Corral.

* * * * *

196

ERNEST E. BYRD

took the witness stand, for and in behalf of the Applicants, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. O'DONNELL:

Q. Please identify yourself for the record? A. Ernest E. Byrd, President of the Corral joint.

Q. Just a minute.

Give me your place of residence. A. 13924 Marrianna Drive, Rockville, Maryland.

Q. Are you an officer and principal stockholder in the Seabright, Incorporated an applicant here? A. Yes, sir.

197 Q. Are you likewise an officer and principal stockholder of Kaycee, Incorporated, an applicant as well? A. Yes, sir.

* * * * *

198 Q. Have you and any other person to the best of your knowledge who is an officer, stockholder or director of Seabright, Incorporated, been arrested on or after February 1, 1965? A. No, sir.

Q. In connection with the operation of Seabright, Incorporated, for the period beginning February 1, 1965 to date has there been any formal citation issued against the restaurant to appear before the Alcoholic Beverage Control Board for violation of the A.B.C. Act? A. Of Kaycee?

Q. I meant to say Seabright, if I said Kaycee, I meant to say Seabright. A. Seabright was cited for non-payment of liquor bills but no violations of that nature, no violations pertaining to anything other than financing.

* * * * *

205 A. They charged me some \$78.00 for a two hour tour and I employed contractors for approximately \$500.00 to soundproof the building.

* * * * *

207 Q. How many employees, roughly, do you have at the Seabright?
A. Do you mean --

Q. Including the musicians. A. Including the band, approximately 25.

* * * * *

CROSS EXAMINATION

BY MR. NIBLACK:

* * * * *

208 Q. Mr. Byrd, is your daily -- let's make it easy. Is your monthly gross income from food more than your monthly gross is from the sale of beer and spirits? A. No, it is not.

* * * * *

Q. Fine, sir.

I think it was on page 30 of the transcript on the Chateaubriand that you said you wouldn't be caught dead in a rock and roll place and you are going to get out of it just as soon as you could. How do you feel about that now? A. Not having the script before me I wouldn't know the exact terminology that I used. I'm 45 years old and I certainly don't do rock and roll music but I'm not old enough to forget that when I was 20 years old that I did do a few other types of dancing, various music that young people dance to and rock and roll music -- if rock and roll music is a crime then the youth of America --

* * * * *

211 Q. Mr. Byrd, you received two citations this year for failure to pay alcoholic beverage suppliers, did you not? A. That's possible, Mr. Niblack. Sometimes our employees over-purchase and we may be stuck with \$10,000 or \$15,000 worth of whisky in our basement which may take us a few extra days to pay off. Since we don't have as much money as some of --

* * * * *

Q. What's the rated capacity of your business, Mr. Byrd? A. 150 people.

212 Q. How is that distributed up and down stairs? A. 75 on each floor.

Q. I see.

Now, how many people do you serve in a good active Saturday night, approximately? A. Approximately according to how the people want to drink. Sometimes they come in for one drink and leave. In that case we may serve 300 or 400 people. In other cases we get people who stay to dance and for the entertainment, therefore; they might -- we might not sell or serve 100 people. We might not serve 50. It is according to what the business is, what holiday it is, from where the people are or if there is a better show on somewhere else they go there.

* * * * *

Q. How much admission do you charge at the door, Mr. Byrd? A. From .50 a person to \$1.00 a person.

213 Q. How does that vary? A. On weekend nights it is a dollar and on weekday nights it is .50.

Q. You have two rooms, one upstairs and one downstairs? A. That's true.

Q. What's the name of the one downstairs? A. The Frog.

Q. And you have bands. What are the names of the bands?

* * * * *

A. The Roaches.

Q. The Roaches? A. And the Creatures.

Q. Now, you also have dancing? A. That's true.

Q. Now, I think upstairs -- which group is upstairs? A. The Roaches.

Q. Now, these Roaches, the music that they play is electronically amplified, is it not, sir?

214 A. That's true.

Q. Is it not a fact that you keep the amplifiers and loud speakers to the rear of the band, up against the window? A. That is not a fact.

* * * * *

THE WITNESS: They move them around. Sometimes if they get a back fed they may have to put one behind them, close to the window. If they don't get a back fed, it gives better sound for them to put them in front of the bandstand. But, the musicians change continuously and they place their instruments where they think they can get the best sound from them. I have nothing to do with placing the instruments.

BY MR. NIBLACK:

Q. Is it not a fact, with the door closed, the music can still be heard out on the street? Loud, you can hear it. A. With my door closed, there is a soft aroma of music coming from the establishment.

(Laughter)

215

BY MR. NIBLACK:

Q. You have a jam session on Sunday, don't you? A. That's true.

Q. That's pretty loud? A. It's according to what you call, "loud".

Q. How would you characterize your music, good, loud, or both?

A. It is both.

Q. Good and loud. A. The youths like it loud.

Q. Right.

* * * * *

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge
Applicant for a Retailer's Class "C"
License at premises
3263 M Street, N. W.
Application No. 8810

FINDING OF FACT
AND CONCLUSION OF LAW

The above-named application, having been protested, came before the Board for hearing on November 26, 1965, at 10:00 a.m., the date set by the Board for continuance from November 24, 1965, the time designated in the placard for protestants to be heard in accordance with Section 14(b) of the Act.

Kaycee, Incorporated was represented by James F. O'Donnell. The protestant Citizens Association of Georgetown was represented by Albert J. Beveridge III, David Niblack and William H. Greer, Jr. Inasmuch as there was simultaneously pending an application for a Retail Class "C" license by Seabright, Inc., for premises next door at 3267 M Street, N. W., in which corporation Mr. Ernest Byrd is a principal officer, it was stipulated by both parties that any of the witnesses could testify as to conditions relating to both licensees.

Before the hearing opened, formal protests signed by 275 owners, occupants or residents of Georgetown property were received by the Board. Also received were 152 individual letters of protest and 169 individual telegrams from Georgetown residents.

A consent petition signed by 32 residents of Washington or its suburbs, none living in Georgetown, was received before the hearing, and 176 consent telegrams were received on the day of the hearing from a variety of addresses, the majority of them outside of Georgetown. The consent telegrams were almost identical in wording and arrived shortly before the hour set for the hearing, at which time the applicant's attorney requested and obtained a Board ruling that no communications received subsequently would be included in the record even though the hearing was continued until November 26, 1965.

At the hearing, 92 individuals, almost all Georgetown residents, signed in protest against the license. Thirty-three persons, only a few from the area, signed up to indicate support for the application.

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

- 2 -

Mrs. Phyllis Ben Kahla, President of Kaycee, Inc., testified that she was active in the management of the subject restaurant from the time that she and Linda Aniba purchased it in 1964 until her child was born in April, 1965. Her food specialty was Arabic cous-cous, which became the new trade name of the restaurant. Mrs. Ben Kahla's husband who was active with her in the business had had some restaurant experience in Tunisia. She reported favorable mention of her restaurant in local newspapers. The cous-cous specialty is still listed in the Yellow Pages, and is still on the menu.

In July, 1965, Ernest Byrd, who held a license for the adjoining establishment known as the Corral, at 3267 M Street, acquired a financial interest in Kaycee, Inc., and was approved by the Alcoholic Beverage Control Board as its Vice President and Treasurer. Mrs. Ben Kahla, though continuing as President, shifted much of the management responsibility to Mr. Byrd. She testified regarding a bomb scare which brought police into the restaurant at dinner time one evening toward the end of 1964 and disturbed the patrons who thought it was a police raid or violation. Business decreased during the next three months which brought a change of name from Cous-Cous to the French Quarter, still later to be the Peppermint Lounge, and a change in the type of entertainment.

For entertainment a four-piece combo and a singer were employed; dance space was cleared and admission was charged. A youthful clientele, 18 to 25, was attracted. Experiments were conducted in a variety of entertainment - jazz, Latin music, pianists, rock and roll. Mrs. Ben Kahla said that her present customers prefer rock and roll. A group of Beatle-type entertainers who are presently employed there attended the hearing but did not participate.

Mrs. Ben Kahla testified that capacity is 84 upstairs and 90 downstairs. On Friday and Saturday nights the admission charge is one dollar.

Miss Valerie Roberts, an English secretary, age 21, testified that she has gone to the Peppermint Lounge twice a week or more for a year and finds it an orderly, agreeable place. Mr. Everett McDermott, a long-time friend of Mrs. Ben Kahla, testified to the orderliness of the restaurant one Friday night when he was there. Mr. Bergaoui, a Tunisian and Voice of America announcer, said that he meets Africans there and finds it the only place in Washington where cous-cous may be had.

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

- 3 -

Captain Dan Kennedy of the 7th Precinct testified to a significant growth in the crime rate in Georgetown in the past year. He reported arrests in the M Street area in the months of June and July in the area bounded by Wisconsin Avenue, Prospect Street, 35th Street and one block south of M Street, were 139 in 1965 versus 88 in 1964, an increase of 57.8%. The comparative figures were reported as follows for the hours of 6:00 P.M. to 3:00 A.M.:

	<u>1964</u>	<u>1965</u>
Disorderly Conduct	29	40
Drunk	51	60
Urinating in Public	2	27
Drinking in Public	2	7
Miscellany	4	5
	<u>88</u>	<u>139</u>

Captain Kennedy reported that of the 130 arrests in Georgetown in June and July, 1965, 31 of those arrested came from Maryland, 39 from Virginia and 60 from the District. He stated that his men have tried to learn from those arrested for being drunk where they have been drinking but has seldom been able to get specific information from them. Attorney Beverage commented that the constitutional rights of arrested people do not permit police to insist on tying the incidence of drunkenness to a specific establishment. In reference to the marked increase in crime, Captain Kennedy said he had requested help from special divisions of the Metropolitan Police Department - Narcotics, Morals, Women's Division and Youth Aid Divisions - in policing the M Street establishments.

Captain Kennedy testified that a major cause of 7th Precinct police problems is complaints of Georgetown residents concerning vandalism and depredations of property, late noise from youths and cars, public urination and other obscene conduct, and severe parking problems. He said that when he had visited the Peppermint Lounge, it was crowded, with a line of patrons standing outside. He assigned two officers to the 3200 block of M Street, where it is located, to keep the lines of patrons against the building and leave the sidewalk open for pedestrians. He said that of the licensed places on M Street those having the largest crowds contribute most to the traffic problems and that the large seating capacity of the Peppermint Lounge is a measure of its contribution to traffic. The Captain has requested three cranes to remove 35 to 50 cars which

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

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are hazardously parked in this area on Friday and Saturday nights, but he added that as soon as such cars are removed, others frequently take their places. Mrs. Ben Kahla testified that there is nothing she can do about the parking problem.

Lieutenant Cherry of the 7th Precinct stated that he had personally supervised the M Street area during the 1965 Summer and Fall. He had checked numerous complaints from residents of the neighborhood about prowlers, fights, scaling of fences, indecent acts in autos and illegally parked automobiles. He had spoken to Mr. Byrd about the noise from the Peppermint Lounge and had concluded that the type of music there stimulated an excitement that creates police problems.

Private Snyder also of the 7th Precinct testified that when the door of the Peppermint Lounge opens to receive or lose guests, the noise inside can be heard to K Street, two blocks away. He has frequently asked that the door be kept closed.

Captain Peter Belin, President of the Citizens Association of Georgetown, testified that he has been on M Street about twice a week this year and has found that much of the noise and confusion is created by the Peppermint Lounge and the Corral, both of which are under Mr. Byrd's direction. Herbert Kunde, of 1220 Potomac Street, around the corner from the Peppermint Lounge, reported specifically of property wrecked by drunken youths, cars being left on sidewalks, his property used for toilet purposes, and vulgar conduct in parked cars. He and his neighbors had employed a private patrolman to protect their property since Captain Kennedy could not assure the help needed.

Samuel Levy, M Street businessman and property owner, reported deterioration in M Street as a business area in 1965 after several years of marked improvement. M Street property which formerly rented rapidly is now increasingly idle. He testified to several instances of street fighting and property misuse by drunks. Mr. Alvin Harper reported that in collecting 138 signatures of residents in the neighborhood of the Peppermint Lounge petitioning denial of this application, he met with only 4 refusals. Only one person favored granting the license.

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

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In considering this application and the evidence adduced at the hearing thereon, one of the first matters requiring Board decision is the status to be accorded the applicant as the holder of an existing license in these premises under the Alcoholic Beverage Control Act. Although the term "renewal" is widely used to describe such applications, the Act has no reference to "renewal". The only distinctions made in the statute between requirements for an original applicant and a subsequent annual application are: (1) the Board need not advertise the latter in a newspaper and, (2) Section 14(c) relating to objections by property owners within a 600-foot radius does not apply. Of the several court decisions pertaining to this subject, the most pertinent and controlling appears to be Minkoff v. Payne, 93 U. S. App. D. C., 123, 127, 210 F.2d 689, 693 (1953), in which the U. S. Court of Appeals for the District of Columbia stated:

"We see no escape from the conclusion that the same qualifications required for an original license remain for (Alcoholic Beverage Control) Board consideration as recurring applications for renewals or new licenses are made."

Accordingly, it is apparent that the Board must satisfy itself that the instant application meets the requirements of Section 14(a)5 of the Act which reads:

"(5) That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

The unfavorable "wishes of the persons residing or owning property in the neighborhood . . ." have been demonstrated with impressive forcefulness and sincerity and in truly significant numbers. These wishes, as expressed through the testimony, letters, telegrams and petitions described above, are not based on hypothetical or imaginary fears, nor are they based on indiscriminating opposition to all licensed establishments. They are based on extensive and intensive personal experiences with the applicant establishment. Undeniably, the behavior of patrons of this establishment is a police problem, but the Alcoholic Beverage Control Board must give serious weight to testimony of the responsible police officials who find the applicant's operation to be a major contributory factor to a situation of law violations in the area which has grown decidedly worse during the past year.

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

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The applicant argues that insufficient direct connection has been established between its premises and the nuisances which are committed in the area. While it is true that much of the causal relationship stems from inferences and hearsay, this Board may not only receive hearsay evidence, but may use it as part of the basis of a decision. In Willapoint Oysters v. Ewing, 174 F.2d 676, 69091 (9th Cir. 1949), the Court stated that "... findings cannot be based upon hearsay alone, nor upon hearsay corroborated by a mere scintilla . . . The test . . . is whether . . . there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The testimony outlined above from residents and from police is far more than a "mere scintilla" and is more than sufficient to convince "a reasonable mind". In this connection the Board is following the mandate of the U. S. District Court for the District of Columbia which said in Clore Restaurant, Inc. v. Payne, 73 F. Supp. 677, 681 (D.D.C. 1947); 48 C.J.S. 223 (99); 30 Am. Jur. 602, 603 (2); 2 A.L.R.2d 1239, 1242, that "The members of the Board are . . . required to exercise sound discretion . . .". This discretion must be directed broadly toward what the Court of Appeals, in Minkoff v. Payne, *supra*, called "The very real public responsibility incident to the business of selling alcoholic beverages."

Having considered and carefully weighed all of the evidence, testimony and arguments adduced, the Majority of the Board FINDS:

- (1) That the applicant corporation and its principal officers meet the requirements of Section 14(a)1, 2 and 3 of the Act.
- (2) That the requirements of Section 14(a)5 of the Act have not been met as proved by the widespread and intense opposition of "the persons residing or owning property in the neighborhood of the premises for which the license is desired."

CONCLUSION

WHEREFORE, it is the Finding of the Majority of the Board this 28th day of December, 1965, that premises 3263 M Street N. W., is not appropriate for the license desired and the same be and is hereby DENIED.

ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson

/s/ J. Bernard Wyckoff

IN RE: Kaycee, Incorporated
t/a Peppermint Lounge

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MINORITY OPINION

I do not agree with either the Finding of the Majority of the Board under Section 14(a)5 of the Act or the conclusion presumably based on said Finding.

The record on file with the Alcoholic Beverage Control Board concerning 3263 M Street, N. W., shows one charge by citation and a dismissal by reason of insufficient evidence during the past year.

In concluding that the application be denied, it appears that the Majority of the Board gave much consideration to witnesses who vigorously testified in a general way about conditions existing in the area covered by M Street in Georgetown and especially blamed this licensee for most of the improper or illegal actions of younger persons in the area. Little attempt was made to show that violators of any laws were patrons of the licensed premises at the time of said violation and, therefore, their conduct chargeable in manner to the operation of this license.

Also the weight given to petitions, letters and telegrams received were from persons who, in the main, indicated that they may have been influenced by inflammatory statements received from a civic organization via a printed circular which requested letters and telegrams to be sent to the Alcoholic Beverage Control Board and which charged this particular licensee with practically all the ills confronting licensees in the area.

Since the record on file does not support the allegations of the protestants herein a question might well be raised to the effect that the denial of this license amounts to a revocation of an existing license without specific charges by citation and without a hearing on same as provided by the Alcoholic Beverage Control Act and Regulations.

I would grant this license.

/s/ James Tyson

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Seabright, Incorporated
t/a Corral Cafe
Applicant for a Retailer's Class "C"
License at premises
3267 M Street, N. W.
Application No. 7212

FINDING OF FACT
AND CONCLUSION OF LAW

The above application, having been protested, came before the Board for hearing on November 26, 1965, at 10:00 a.m., the date set by the Board for continuance from November 24, 1965, the time designated in the placard for protestants to be heard in accordance with Section 14(b) of the Act.

Seabright, Inc., was represented by Mr. Ernest Byrd, President, and its attorney, James F. O'Donnell. The protestant Citizens Association of Georgetown was represented by Albert J. Beveridge III, David Niblack and William H. Greer, Jr. Inasmuch as there was simultaneously pending an application for a Retail Class "C" license by Kaycee, Inc., for premises next door at 3263 M Street, N. W., in which corporation Mr. Ernest Byrd is a principal officer, it was stipulated by both parties that any of the witnesses could testify as to conditions relating to both licensees.

Before the hearing opened, formal protests signed by 271 owners, occupants or residents of Georgetown property were received by the Board. Also received were 152 individual letters of protest and 169 individual telegrams from Georgetown residents.

A consent petition signed by 32 residents of Washington or its suburbs, none living in Georgetown, was received. One hundred seventy-six consent telegrams were received early on the day of the hearing from a variety of addresses, the majority of them outside Georgetown. The telegrams were almost identical in wording and arrived shortly before the hour set for the opening of the hearing, at which time the applicant's attorney requested and obtained a Board ruling that no communications received subsequently would be included in the record even though the hearing was continued until November 26, 1965.

At the hearing, 92 individuals, most of them Georgetown residents, signed a paper to indicate their presence in protest against the application. Thirty-three persons, very few from the area, signed up to support the application.

IN RE: Seabright, Inc.
t/a Corral Cafe

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Mr. Ernest Byrd testified that since the beginning of this license year, on February 1, 1965, he has been cited by the Board only once, for a credit violation. He described measures taken during the year to improve the sale of food, including wall signs advertising chicken dinners and sandwiches. He stated that he now opens at 10:00 a.m. and charges lower prices for food during the day to stimulate food sales. He stated further that since the protest hearing of last January he has consulted an acoustical engineer and spent \$500 to soundproof his building. He reported that this cut the noise 90% and that he could hear nothing from the Corral when he visited Mrs. Kendle who resides behind the alley in the rear of his establishment. He stated that more than half of his profits this year have gone into improvements of the premises and in employing higher priced personnel. He charges fifty cents admission on week nights and \$1.00 on weekends and has as many as 300 or 400 people during an evening. His capacity is 150 - 75 on each floor. His musicians (the current bands are entitled the Roaches and the Creatures) use electronic amplification which is moved to various spots, sometimes being placed in the front windows. He stated that with the doors closed one hears a "soft aroma of music" outside.

Several witnesses testified concerning a meeting which was held in March, 1965, by a number of Georgetown licensees to which Captain Kennedy of the 7th Precinct and several representatives of the Citizens Association of Georgetown were invited. At this meeting the citizens discussed their complaints concerning noise, nuisances, traffic and parking. Mr. Byrd testified that he has always endeavored to be cooperative with the citizens but that the meeting broke up under a cloud and that no results ensued. Mr. Philip K. Robinson, Chairman of the Citizens Association Licensing Committee, testified that he attended the meeting and that he visits M Street from time to time. He noted no significant improvement in the noise problem nor have the complaints coming to him diminished since the March meeting.

Captain Kennedy of the 7th Precinct testified to a significant growth in the crime rate in Georgetown in the past year. He reported arrests in the M Street area in the months of June and July, in the area bounded by Wisconsin Avenue, Prospect Street, 35th Street and one block south of M Street, were 139 in 1965 versus 88 in 1964, an increase of 57.8%. The comparative figures were reported as follows for the hours of 6:00 P.M. to 3:00 A.M.:

IN RE: Seabright, Incorporated
t/a Corral Cafe

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	<u>1964</u>	<u>1965</u>
Disorderly Conduct	29	40
Drunk	51	60
Urinating in Public	2	27
Drinking in Public	2	7
Miscellany	4	5
	<u>88</u>	<u>139</u>

Captain Kennedy reported that of the 130 arrests in Georgetown in June and July, 1965, 31 of those arrested came from Maryland, 39 from Virginia and 60 from the District. He stated that his men have tried to learn from those arrested for being drunk where they have been drinking but has seldom been able to get specific information from them. Attorney Beveridge commented that the constitutional rights of arrested people do not permit police to insist on tying the incidence of drunkenness to a specific establishment. In reference to the marked increase in crime, Captain Kennedy said he had requested help from special divisions of the Metropolitan Police Department - Narcotics, Morals, Women's Bureau and Youth Aid Divisions - in policing the M Street establishments.

Captain Kennedy testified that a major cause of 7th Precinct police problems is complaints of Georgetown residents concerning vandalism and depredations of property, late noise from youths and cars, public urination and other obscene conduct, and severe parking problems. He assigned two officers to the 3200 block of M Street, where the Corral is located, to keep the lines of patrons against the building and leave the sidewalk open for pedestrians. He said that of the licensed places on M Street those having the largest crowds contribute most to the traffic problems and that the large seating capacity of the Corral is a measure of its contribution to traffic. The Captain has requested three cranes to remove 35 to 50 cars which are hazardously parked in this area on Friday and Saturday nights, but he added that as soon as such cars were removed, others frequently take their places.

Lieutenant Cherry of the 7th Precinct stated that he had personally supervised the M Street area during the 1965 Summer and Fall. He had checked numerous complaints from residents of the neighborhood about prowlers, fights, scaling of fences, indecent acts in autos and illegally parked automobiles. He had spoken to Mr. Byrd about the noise and about

IN RE: Seabright, Incorporated
t/a Corral Cafe

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painting the glass on the front windows because dancers in bikinis who were visible through these windows caused excessive crowds and congestion on the sidewalk.

Private Snyder of the 7th Precinct who is assigned to the M Street beat testified that he makes more arrests in the 3200 block of M Street than any other. He stated that he has had to ask the Corral to close its door approximately 25 times during the past year. When the door is open, he said the noise could be heard as far away as K Street beneath the freeway. He has noted a great increase in parking violations over the last three years.

The Corral advertises "jam sessions" from 2:00 p.m. on Sundays. A nearby resident, Mr. Oliviero Capello, presented a tape recording he made on a recent Sunday at 4:00 p.m., standing between 10 and 20 feet from the closed door of the Corral. No recording of the sounds audible through the frequently open door was introduced in evidence.

Captain Peter Belin, President of the Citizens Association of Georgetown, testified that he has been on M Street about twice a week this year and has found that much of the noise and confusion is created by the Peppermint Lounge and the Corral, both of which are under Mr. Byrd's direction. Herbert Kunde of 1220 Potomac Street, around the corner from the Peppermint Lounge, reported specifically of property wrecked by drunken youths, cars left on sidewalks, his property used for toilet purposes, and vulgar conduct in parked cars. He and his neighbors had employed a private patrolman to protect their property since Captain Kennedy could not assure the help needed.

Samuel Levy, M Street businessman and property owner, reported deterioration on M Street as a business area in 1965 after several years of marked improvement. M Street property which formerly rented rapidly is now increasingly idle. He testified to several instances of street fighting and misuse of property by drunks. Mr. Alvin Harper reported that in collecting 138 signatures of residents in the neighborhood of the Corral, petitioning denial of this application, he met with only four refusals. Only one person favored granting of the license.

In considering this application and the evidence adduced at the hearing thereon, one of the first matters requiring Board decision is the status to be accorded the applicant as the holder of an existing license in these premises under the Alcoholic Beverage Control Act. Although the term "renewal" is widely used to describe such applications, the Act has no

IN RE: Seabright, Incorporated
t/a Corral Cafe

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reference to "renewal". The only distinctions made in the statute between requirements for an original application and a subsequent annual application are: (1) the Board need not advertise the latter in a newspaper and, (2) Section 14(c) relating to objections by property owners within a 600-foot radius does not apply. Of the several court decisions pertaining to this subject, the most pertinent and controlling appears to be Minkoff v. Payne, 93 U. S. App. D. C. 123, 127, 210 F.2d 689, 693 (1953), in which the U. S. Court of Appeals for the District of Columbia stated:

"We see no escape from the conclusion that the same qualifications required for an original license remain for (Alcoholic Beverage Control) Board consideration as recurring applications for renewals or new licenses are made."

Accordingly, it is apparent that the Board must satisfy itself that the instant application meets the requirements of Section 14(a)5 of the Act which reads:

"(5) That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

The unfavorable "wishes of the persons residing or owning property in the neighborhood. . ." have been demonstrated with impressive forcefulness and sincerity and in truly significant numbers. These wishes, as expressed through the testimony, letters, telegrams and petitions described above, are not based on hypothetical or imaginary fears, nor are they based on indiscriminating opposition to all licensed establishments. They are based on extensive and intensive personal experiences with the applicant establishment. Undeniably, the behavior of patrons of this establishment is a police problem, but the Alcoholic Beverage Control Board must give serious weight to testimony of the responsible police officials who find the applicant's operation to be a major contributory factor to a situation of law violations in the area which has grown decidedly worse during the past year.

IN RE: Seabright, Incorporated
t/a Corral Cafe

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The applicant argues that insufficient direct connection has been established between its premises and the nuisances which are committed in the area. While it is true that much of the causal relationship stems from inferences and hearsay, this Board may not only receive hearsay evidence, but may use it as part of the basis of a decision. In Willapoint Oysters v. Ewing, 174 F.2d 676, 690-91 (9th Cir. 1949), the Court stated that "... findings cannot be based upon hearsay alone, nor upon hearsay corroborated by a mere scintilla. . . The test. . . is whether . . . there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The testimony outlined above from residents and from police is far more than "a mere scintilla" and is more than sufficient to convince "a reasonable mind". In this connection the Board is following the mandate of the U. S. District Court for the District of Columbia which said in Clore Restaurant, Inc. v. Payne, 73 F. Supp. 677, 681 (D.D.C. 1947); 48 C.J.S. 223 (99); 30 Am. Jur. 602, 603 (2); 2 A.L.R.2d 1239, 1242, that "The members of the Board are. . . required to exercise sound discretion. . .". This discretion must be directed broadly toward what the Court of Appeals, in Minkoff v. Payne, supra, called "The very real public responsibility incident to the business of selling alcoholic beverages."

Having considered and carefully weighed all of the evidence, testimony and arguments adduced, the Majority of the Board FINDS:

- (1) That the applicant corporation and its principal officers meet the requirements of Section 14(a)1, 2 and 3 of the Act.
- (2) That the requirements of Section 14(a)5 of the Act have not been met as proved by the widespread and intense opposition of "the persons residing or owning property in the neighborhood of the premises for which the license is desired."

CONCLUSION

WHEREFORE, it is the Finding of the Majority of the Board this 28th day of December, 1965, that premises 3267 M Street, N. W., is not appropriate for the license desired and the same be and is hereby DENIED.

ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson

/s/ J. Bernard Wyckoff

3142 P STREET
WASHINGTON, D. C. 20007

November 20th, 1965.

The Chairman,
The Alcoholic Beverage Control Board,
District Building,
14th & E Streets, N. W.
Washington, D. C.

Dear Madam:

License Renewal Cases 7212 and 8810

I note that a hearing is to be held on November 24th to consider the above cited liquor license renewal applications - one by the Corral at 3267 M Street, N. W., and the other by the Peppermint Lounge at 3263 M Street, N. W. As a resident of Georgetown for many years, a property owner and a taxpayer, I wish to register my strong opposition to both these renewals for the reasons stated below.

It is common knowledge that there has been during the past two or three years a proliferation of establishments on M Street in Georgetown catering in large part to teenagers who, owing to the laws prevailing in Maryland and Virginia, cannot be served beer and liquor in their states of residence. A generous, and, in my opinion, mistaken policy of licensing has resulted in an excessive number of these establishments in our area. Not only parking abuses, but, much more importantly, disorder, vandalism, and nuisances of all kinds have been steadily invading the residential areas of Georgetown since these places opened and have been placing increasing burdens on our understaffed police force whose attention to more serious criminal elements has consequently been distracted with obviously unfortunate results.

A group of well-known, public spirited citizens, members of the Citizens Association of Georgetown, has for some time been investigating this whole situation with a view to ascertaining what the residents of this once quiet and orderly part of Washington can do to diminish the threat implicit in this invasion of elements among whom there are regrettably so many undesirables - so far as their conduct in this part of town is concerned. On the basis of the findings of these citizens, who will be appearing before you on November 24th, I am convinced that the patrons of the two establishments mentioned above are among the very worst offenders and that a denial of the reference applications would be a salutary and a helpful measure in a situation which has become increasingly grievous.

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I hope that the Board will find it possible to deny these two license renewal applications as a first step in the process of restoring an orderly and acceptable liquor licensing situation in this neighborhood.

Sincerely yours,

/s/ Philip W. Bonsal
Vice-President of Citizens
Association of Georgetown,
Retired American Ambassador.

J. NOEL MACY
3339 N STREET, N. W.
WASHINGTON 7, D. C.

22 Nov. 1965.

Chairman, ABC Board
District Building
14th & E Streets, N. W.
Washington, D. C. 20004

Gentlemen,

I would like to go on record as opposing most strenuously the renewal of a Class "C" license to either the Peppermint Lounge or to the Corral Cafe.

I am sure your Board needs no further evidence as to the intolerable conditions of vandalism, rowdyism and the commission of numberless indecent acts occurring constantly in the neighborhood immediately adjacent to these establishments. I believe it is also without question that these acts are perpetrated by the clientele which these licensees have attracted and brought into this community.

I believe you are seriously concerned as to the responsibility of your licensees for the conduct of their patrons off their premises. I can agree that probably no establishment can properly be held responsible for some sporadic illegal act committed by a client after he had left the premises.

I do believe that the owners of a licensed establishment can and should be held responsible if they so conduct their establishment that it caters exclusively to rowdies, mostly imported from elsewhere, who regularly and continuously commit such acts in a residential neighborhood.

These establishments, having demonstrated that under their licenses they conduct themselves in such a manner as to attract this type of clientele exclusively, and thus serve as a base for the outrageous acts committed in the surrounding area, I can see no reason for renewing their licenses.

I should think that the difference between these licensees' description of the kind of establishment they were going to run when they first applied, and the actual facts of the kind of establishment they have run would be sufficient grounds for charging them with obtaining their original licenses under false pretenses. Surely the Board would never have issued a license anticipating the present situation.

The denial of a renewal of these licenses is essential for the peace, health and welfare of the community.

Sincerely,

/s/ J. Noel Macy

THE CITIZENS ASSOCIATION of GEORGETOWN

*(Successor to The Georgetown Citizens Association
and The Progressive Citizens Association of Georgetown)*

August 4, 1965

The Honorable Walter N. Tobriner
President, Board of Commissioners
District Building
14th & E Streets, N. W.
Washington, D. C. 20004

Dear Mr. Tobriner:

The Citizens Association of Georgetown has opposed the issuance of various Class C restaurant liquor licenses in the Georgetown area, particularly in those cases where it is apparent that music and dancing are to be permitted on the premises. Despite the known views of the citizens of the Georgetown community, the Alcoholic Beverage Control Board has renewed existing licenses, and in the past four years has greatly increased the number of Class C licenses outstanding in the "M" Street area. A tabulation of such outstanding licenses is attached. From this tabulation it is apparent that saturation has been reached, as the Alcoholic Beverage Control Board itself agreed in a decision earlier this year.

This licensing policy has resulted in creating a cheap honky-tonk atmosphere in this historic part of the nation's capital. It has attracted to this high-grade residential section crowds of young undesirables, many from outside the District, together with their motor vehicles for which no adequate parking is available. It should be noted that in granting occupancy permits for these new establishments apparently little or no consideration was given to the substantial intensification of property-use involved, which should have required provision for off-street parking. The result is that the police have been unable to enforce parking regulations to provide a minimum of safety at street intersections neighboring "M" Street. Nor have the police been able to prevent a marked increase in illegal drinking in autos parked in the adjacent residential section. Other nuisances, indecencies, and depredations to property have prompted some citizens near "M" Street to hire private police because of the inability of the regular police to cope with the situation.

The Association maintains that the holding of a permit to sell alcoholic beverages is a privilege, not a right, a point well substantiated by recent court decisions. In these circumstances, therefore, it is incumbent upon applicants for such licenses, or the renewal thereof, to prove that their issuance or reissuance is in the public interest, rather than to have the burden of proof placed on the adversely-affected citizenry. It is hoped that the Alcoholic Beverage Control Board when fully reconstituted will

The Honorable Walter N. Tobriner
August 4, 1965
Page Two

scrutinize each license renewal within this framework and not hesitate to refuse such renewals when justified by the reasonable objections of citizens resident in the area. Additionally, the question of qualified renewal might be explored together with such administrative changes as would be necessary to enforce such qualification. The Association would be pleased to work with the Board in this respect, since it offers an opportunity to correct the situation extant in Georgetown.

In view of the foregoing, it becomes of paramount interest that the pending appointment to the ABC Board be filled by an individual free from any possible "conflict of interest". This concept would envisage a person who has no past connection with the liquor industry and who possesses the very keenest understanding of the public trust vested in the Board.

Georgetown has gained a national reputation as being one place where a central part of a large city has been restored and beautified through private initiative, maintaining historic landmarks and character. I am fearful that unless the problems touched upon in this letter are given serious attention and corrective action this reputation will be seriously tarnished, and that the area will become known as another "place across a river" frequented by imbibing teenagers and other undesirable elements.

Very sincerely yours,

Peter Belin, President

PB/js
cc: General Charles M. Duke
The Honorable John B. Duncan

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: 3259 M Street, Inc.
 t/a The Crazy Horse
 Applicant for a Retailer's Class "C"
 License at premises
 3259 M Street, N. W.
 Application No. 9115

FINDING OF FACT
AND CONCLUSIONS OF LAW

The above application, having been protested, came before the Board for hearing on January 21, 1966, at 10:00 a.m., in accordance with the placard posted on the premises as required by Section 14(b) of the Act. Testimony was concluded and legal arguments made on January 24.

The applicant corporation was represented by John J. Boyle, President, and Samuel L'Hommedieu, Vice-President, whose attorney was Samuel B. Block. The protestant Citizens Association of Georgetown was represented by William Greer and David Niblack, as co-counsel.

Testimony on the history of the establishment at 3259 M Street, N. W., henceforth to be called by its trade name, the Crazy Horse, was given by Sanford Bomstein, who, with Thomas Lyons, applied for the original license in September, 1964. Despite a small protest, the Board granted the license and Mr. Bomstein proceeded to spend over \$80,000 remodeling the long-standing P. T. Moran Feed and Hardware Store. The original application stated the intention to operate a restaurant with entertainment and dancing. Terms of the 15-year lease included a prohibition on employment of girls in "indecent costumes". The Crazy Horse commenced operations on December 31, 1964. At the hearing on its 1965 license, only two nearby residents appeared in protest and the license issued. In April, 1965 Mr. Bomstein, and his brother bought out Mr. Lyons' interest; in October they sold the business for \$110,000 to Messrs. Boyle and L'Hommedieu, each of whom was already a licensee in separate restaurants in Georgetown.

Among Mr. Bomstein's efforts to meet objections of neighbors was a soundproofing job so successful that a gentleman living behind the Crazy Horse wrote an unsolicited letter to the Board describing how his opposition had changed to support for the license. Also, a back door was closed to use by patrons. Mr. Bomstein met with a group of nearby licensees and the License Committee of the Citizens Association of Georgetown, trying to develop helpful measures, although this effort was unproductive. He also investigated the possibility of the restaurant's employing private guards to supplement police in the area, but found this impractical. He put up signs, table-tents, and had announcements by the band-leader requesting quiet in the residential area and stating that rest-rooms would remain open after closing time.

IN RE: 3259 M Street, Inc.
t/a The Crazy Horse

- 2 -

These measures have been continued by the present owners, according to testimony of Mr. L'Hommedieu, Mr. Boyle and Mr. David Williams, the manager, who have added to previous efforts to comply with the statutory requirement as to sale of food. The Crazy Horse is open for lunch on week-days and has advertised this fact in the community. There are menus, signs and announcements concerning food. A large number of witnesses for the applicant reported having eaten or seen people eating at the Crazy Horse.

Entertainment consists solely of music — presently a 4-piece band, whose members sing and play rock-and-roll or "top 40" songs — and dancing, with no professional dancers or comedians. Youthful-appearing persons are checked at the door and asked for two pieces of identification. One citation by the Alcoholic Beverage Control Board for serving a minor resulted in a warning, another was dismissed by the Board. The manager testified that the average check is \$1.50 or slightly more per person with beer costing 75 cents. Admission is 50 cents on week-nights, \$1.00 on week-ends. With a rated capacity of 350, the Crazy Horse has about 450 customers during an average Friday evening, 500 on Saturdays and 200 on other nights.

Witnesses other than employees of the applicant included the following: Colonel Robert Wheeler, Commanding Officer of the Armed Forces Military Police of the District of Columbia, stated that, on the basis of three visits to the Crazy Horse since early November as well as inspection of his files covering an earlier period, he considered the place to be well run and not objectionable for attendance by military personnel.

Nine Metropolitan Police Department officers who have been in the Crazy Horse on numerous occasions while assigned to the 7th Precinct, the Youth Aid Division, or as patrons, testifying along similar lines, agreed that the age of youthful patrons is always checked; that they had never observed intoxication or disorderly conduct or had reason to make any arrests on the premises; and that they had eaten or seen others eating there. Private R. J. Snyder, a 20-year veteran of the 7th Precinct assigned to the M Street beat, volunteered his opinion that the Crazy Horse is run better than any of the other establishments offering entertainment in this area in that he has approved his sons, aged 19 to 24, going there. The officers mentioned a few arrests of persons attempting to enter the Crazy Horse but none of persons leaving there. Counsel for the parties stipulated that several other officers of the 7th Precinct, available under subpoena, would have testified to the same effect.

The president and the entertainment chairman of the District of Columbia Young Republicans testified that their organization has a social gathering from 5 to 8 p.m., on Fridays at the Crazy Horse, during which time the establishment is closed to the general public. Both have found it to be orderly, clean and well-managed.

IN RE: 3259 M Street, Inc.
t/a The Crazy Horse

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Three other patrons testified and the parties stipulated to similar testimony proffered by about 18 additional citizens of the metropolitan area, with varied occupations ranging from a contractor to a State Department attorney, from an owner of a printing firm to a secretary, from a land developer to a magazine writer.

Appearing for the protestants was Mr. A. W. Deporte, who resides around the corner from the Crazy Horse at 1221 Potomac Street, among a row of houses in a block zoned commercial. He reported serious problems of illegal parking, noisy crowds of young people, much petty vandalism and open public urination. Having lived there since 1962, he says the problems date from the end of 1964, when the Crazy Horse opened. Last summer the residents of the immediate area hired a private guard to patrol 1 1/2 blocks and found him very useful in abating the nuisances.

Mr. Joseph Poinelli, who owns a woodworking shop at 1050 Potomac Street, south of M Street near the Crazy Horse, testified that, due to noise, he had moved from 3258 M Street, in October, 1964, but was still bothered by noise from restaurants in the 3200 block of M. His shop and car have been vandalized and he believes that his business has suffered because of customers' reluctance to come to the area which has changed so greatly.

Mr. Carl Knobloch, who owns the premises at 3269 M Street, testified in opposition to all "rock-and-roll establishments in Georgetown". His building tenant, an interior decorating shop, has been falling behind in rent and he is worried that, if he loses this tenant, he will be unable to find one other than a restaurant able to pay his high rent justified by his recent increase in assessment.

Captain Dan Kennedy, Commanding Officer of the 7th Precinct, gave statistics on arrests for Class II offenses in the area bounded by 33rd, Wisconsin, N and one block south of M Street for 1964 and 1965. The listed categories totalled 261 arrests in 1964, 347 in 1965. He believes that all establishments which attract a "young adult group" into the area contribute to this problem, as well as to the parking and traffic situations which plague the area on week-ends. A number of licensed and unlicensed restaurants which opened in the area during 1965 were named. He has requested that special inspections be made of several establishments, including the Crazy Horse, by other branches of the Metropolitan Police Department.

Protestants offered a resolution of opposition to this license passed unanimously by 200 persons attending a meeting of the Citizens Association of Georgetown. They also submitted worksheets to supplement the protest petitions, purporting to show the heavy opposition of residents in nearby blocks.

Included in the record are consent petitions signed by over 1300 persons, overwhelmingly identified as "patrons" and not residing in the area; four letters of support; protest petitions signed by 366 persons, predominantly Georgetown residents; and 36 letters and telegrams of opposition.

IN RE: 3259 M Street, Inc.
t/a The Crazy Horse

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In addition to all of the above, the applicant presented three witnesses whose testimony was not connected directly to the instant application but was intended to establish that the entire commercial foundation of the licensed restaurant industry in the city has been based on the assumption that beverage licenses would always be re-issued provided the licensee had not violated the law or regulations. This assumption appeared well founded in the unchanging practice of the Alcoholic Beverage Control Board during 31 years.

Nevertheless, it is the opinion of this Board that the intent of Congress, as expressed in the working of the Alcoholic Beverage Control Act, and the interpretation of the courts, as stated particularly in Minkoff v. Payne, require holders of alcoholic beverage licenses to comply with all provisions of the Statute prior to each annual issuance of a new license just as fully as do original applicants for such licenses. Knowing that conditions change, especially in such a sensitive area of public regulation, Congress specifically provided for annual licenses and nowhere in the Act referred to "renewal". Whether or not long-standing customs of cursory review or of giving preponderant weight to the equities involved in an existing enterprise may have lulled or misled some licensees into believing otherwise does not alter this statutory obligation of the Board. Therefore, the Board has heard the instant case and weighed the testimony on this basis.

Having considered all of the evidence and arguments adduced in this case, the Board FINDS that:

(1) The neighborhood designated by the Board remains as delineated at the time of the original application in 1964, as follows:

"Beginning at Old Chesapeake and Ohio Canal and 34th Street, N. W.; north on 34th Street, N. W. to O Street, N. W.; east on O Street, N. W. to Wisconsin Avenue, N. W.; north on Wisconsin Avenue, N. W. to O Street, N. W.; east on O Street, N. W. to 31st Street, N. W.; south on 31st Street, N. W. to Old Chesapeake and Ohio Canal; west along Old Chesapeake and Ohio Canal to 34th Street, N. W."

(2) Inasmuch as a license of the class applied for is in existence at these premises, Section 14(c) of the Act and Section 2-103 of the Regulations do not apply.

(3) The basic question is whether the premises are appropriate considering the surroundings and the wishes of the neighborhood under terms of Section 14(a)5.

The strong emotions and sharply divergent views spread upon this record have highlighted a major problem of social control in this community. The fundamental causes and the potential long-range cures of the problem are far broader than the area of jurisdiction assigned to the Alcoholic Beverage Control Board. City and

IN RE: 3259 M Street, Inc.
t/a The Crazy Horse

- 5 -

regional planning, zoning, land-use patterns, recreation planning, deployment of police forces, parking and traffic control, alcoholic beverage laws in nearby states, and education in its broadest aspects are among the varied factors contributing to the current unhappy situation in the Georgetown area near M Street. It is unrealistic and inappropriate to attempt to solve such a complex problem through the restricted medium of the present alcoholic beverage law and the limited powers available to the Board. The total community — from the Congress which governs the District, to local civic groups throughout the city — needs to think through the aspects of this situation, which exists in varying degrees in many neighborhoods. While revisions of the Alcoholic Beverage Control Act and Regulations aimed at giving the Board more flexible tools than it now possesses might be helpful, many other steps outside the direct area of beverage control are also indicated.

Notwithstanding all of this, the Board has a clear obligation to administer the existing statute in regard to the instant application. The equities on the two sides of this case are closely balanced. There is grave question whether the applicant's premises, utilized as they have been, can, in fact, be held to be appropriate considering the surroundings. The testimony adduced clearly shows the adverse wishes of a substantial part of the neighborhood and discloses the existence of an undeniably unsavory neighborhood situation to which we can reasonably conclude that the patrons of this establishment have contributed.

Nevertheless, the record before the Board discloses that the proprietors of the establishment have made serious and good faith efforts to minimize the adverse impact of their patrons on the neighborhood. Furthermore, the record reveals substantial testimony in favor of the applicant from both public and private witnesses who have personally observed the premises in operation.

In discharging its responsibilities under the Statute, the Board is necessarily limited to the record before it in a particular case. On the present record, the Board concludes that Section 14(a)5 is not a bar to issuance of this license for the year commencing February 1, 1966.

IN RE: 3259 M Street, Inc.
t/a The Crazy Horse

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CONCLUSION

WHEREFORE, it is the Finding of this Board the 29th day of January, 1966, that premises 3259 M Street, N. W., is appropriate for the license applied for and the same may issue if and when the applicant meets the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson

/s/ James G. Tyson

/s/ J. Bernard Wyckoff

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE THE
ABC BOARD

220

Monday, November 29, 1965
Tuesday, December 7, 1965

VOLUME II

PROTEST HEARING

* * * * *

280

REBUTTAL ARGUMENT BY MR. O'DONNELL

* * * * *

285

THE CHAIRMAN: I would like to ask two questions on to which Counsel on either or both sides may care to comment and their memorandum; one is the question that has been raised about whether the legal right of property owners, in what way the legal rights of property owners may or may not be equated with the privilege and/or rights involved in holding a liquor license, and the other one, is a consideration of the question of whether protests by residents and owners in the neighborhood

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have more weight in an initial application, an original application when they are arguing against a proposed establishment as compared with arguments against an existing establishment where there is actual experience with its operation.

We will take this under advisement and these memorandum are to be in one week from today.

MR. O'DONNELL: I forgot to submit the papers I said I would at the close of the hearing. I am a little low on copies so I just have one for the Board and one for the record.

(Whereupon, at 12:40 o'clock a.m., the hearing was concluded.)

* * * * *

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
EXCERPTS

1

Washington, D. C.
11:30 a.m., Monday, March 14, 1966.

BEFORE

HONORABLE JOHN J. SIRICA, Judge of the United States District
Court for the District of Columbia.

DEPOSITION OF CAPTAIN PETER BELIN

* * * * *

3

DIRECT EXAMINATION

BY MR. LANE:

* * * * *

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Q. *** Incidentally, do your cards there indicate the length that
any person has been a member of the Association? A. Back to about
1960, yes, sir.

Q. Now, would you look up Mrs. Schackleton for us, please?

A. Mr. and Mrs. Robert W. Schackleton.

3232 Reservoir Road, Washington.

Q. Does it show anything about how long they have been members?

A. Yes, sir.

Q. How long? A. Back at the beginning of this card is the year
'59, '60, and it shows that \$2 were paid to the Progressive Citizens As-
sociation of Georgetown. And they have paid dues regularly and are cur-
rently paid up for the year '65-'66.

Q. Would you get Mr. Wyckoff's card? A. Yes, sir.

Q. What does his card show? A. Mr. and Mrs. J. Bernard Wyckoff
of 3320 O Street, and essentially the same information appears in the card,
beginning, '59-'60, and this shows that this couple were members of
the Georgetown Citizens Association until merger, and they are also paid
up for the year '65-'66.

7

Q. Now, I am going to ask you some other names, and these are
people who testified at the hearing before the Alcoholic Beverage Control
Board, Captain, and I am going to ask you to produce the cards of these
people.

Don V. Harris. A. Mr. and Mrs. Don V. Harris, Jr., 3330 M Street.

Q. And how long is that — essentially the same information?

A. Essentially, except they apparently joined the Georgetown Citizens Association beginning in '60, and in addition to their dues, they have contributed modest contributions in the years '63, '64 and '66.

* * * * *

8 Q. And the next person is Alvin Harper? A. Mr. and Mrs. Alvin B. Harper, 1219 Thirty-fifth Street.

Q. How long are they shown to be members? A. They were members of the Georgetown Citizens Association in '60-'61, and they became members of the merged Association in 1963, and are paid up members today.

* * * * *

Q. That is correct. I got you.

The next one will be Mr. Sam Levy? A. Mr. and Mrs. Samuel M. Levy, 3245 M Street.

9

Q. How long a member? A. Joined in '63-'64, a paid up member today; contributions, \$7 in '64-'65, and \$22 in '65-'66.

* * * * *

A. Well, Mr. and Mrs. Herbert E. Kunde, K-u-n-d-e, 1220 Potomac Street, Northwest.

Q. How long have they been members? A. Since '63-'64; apparently paid up; no contributions.

Q. Is that the same Mr. Herbert Kunde who testified at the ABC Board? Do you recall that? A. I think so, yes.

* * * * *

12 Q. Now, with respect to another matter of the organization of the Association, I am going to ask you with respect to the same period of time, beginning July 1st, 1965, and continuing through the same period, the hearing before the ABC Board, the names of the executive board of the Citizens Association of Georgetown? A. Captain Belin, president;

Mr. Philip Bonsal, first vice president; Mr. Gardner Palmer, second vice president; Miss Louise Trimble Foster, third vice president; Mrs. Jack H. Gilbert, president; and secretary, at the time of initiation, 1 July, 1965, J. Bernard Wyckoff; ex-president, Seft K. Robinson; ex-president, Louis A. Traxel; and three appointees, Allen W. Dulles, Frederick Hill, and Mrs. Harold Hinton; 11, I believe.

* * * * *

14 Q. Now, sir, with respect to the meeting in July, was Mr. Wyckoff present? A. He was.

Q. Was he at the June meeting? A. He was.

Q. Did he act as secretary of the meeting? A. Yes.

* * * * *

25 DIRECT EXAMINATION (resumed)

BY MR. LANE:

* * * * *

26 Q. And by going to Court, do you mean that a suit was filed by the Association or in the name of the Association by the counsel for the Association and the Alcoholic Beverage Control Board named as the defendant? A. Well, the first part is correct. I don't know, I can't recall who was named as defendants. I thought it was the Steak Pit.

* * * * *

46 Q. Did you know at that time that Mrs. Schackleton was a member of the Central Committee of the Democratic Party of the District of Columbia?

47 A. Yes, sir.

Q. Did you know anything about the endorsement of Mr. Wyckoff for the vacancy on the ABC Board by the Central Committee of the Democratic Party? A. Yes, sir, from the newspapers. There was an article I believe, an article.

* * * * *

CROSS EXAMINATION

52 BY MR. STEIN:

Q. Captain Belin, I am going to read you some names and I would like you to tell me whether these names are reflected in your cards.

Miss Mary McGrade? A. Miss Mary A. McGrade?

Q. Yes. A. 1217 Twenty-ninth Street.

Q. Yes. Is there a Dorothy McGrade there? A. There is.

Q. So they are both included? A. They are both at the same address.

53 Q. How about Kermit S. Murphy? A. The first name?

Q. Kermit, K-e-r-m-i-t? A. Negative.

Q. R. Michael Duncan? A. Initials?

Q. R. Michael. A. Thank you.

Q. Cleveland McCauley? A. Mrs. Cleveland McCauley?

Q. Yes. A. 2714 Olive Avenue.

Q. That is correct.

Leigh Miller? A. Not listed, initial with the first name Leigh, no, sir.

Q. Mary E. McDonald? A. Is that M-c?

Q. Yes. A. Mary, did you say?

Q. Mary E. McDonald, 2724 Olive Avenue? A. Negative.

Q. Tedson J. Meyers? A. Mr. and Mrs. Tedson Meyers, 1237 Twenty-eight Street.

Q. Correct.

54 Arthur C. Moore? A. Arthur C., negative.

Q. Rickey Daniel Sewell? A. Negative.

Q. Is Captain Kennedy a member of the Association? A. Captain Dan Kennedy of the Seventh Precinct?

Q. Yes. A. Negative.

Q. Carolyn M. Andrade? A. Negative.

Q. Margaret Walker? A. Do you have an address on that?

Q. No. Do you have a Margaret Walker? A. No.

Q. How about Nicholas J. DiGiovanni? A. Will you spell it?

Q. D-i-G-i-o-v-a-n-n-i. A. Is that D-i-G?

Q. Yes. A. Negative.

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56 Q. You formally appeared in the cases of the Corral and the Peppermint Lounge, but you didn't formally appear in the case of the Roundtable; isn't that correct? A. Yes, sir.

Q. And your decision not to formally appear was made when?
A. I believe early in January, 1966.

Q. Your Association decided that it would not formally appear in January, 1966; isn't that correct? A. I keep telling you, the Association
57 tion action was its support of a local neighborhood opposition.

Q. But it did appear in the other two cases? It entered an appearance; isn't that correct? A. That is right.

Q. And it didn't enter its appearance in the case of the Roundtable; isn't that correct? A. As an Association, that is correct.

Q. Was your decision not to formally enter an appearance based on possible embarrassment to Mr. Wyckoff? A. Certainly not.

Q. Was that discussed? A. No, sir.

* * * * *

64 CROSS EXAMINATION

BY MR. MORGAN:

* * * * *

66 Q. With reference to the formal protest that was entered in the Roundtable case by the neighborhood residents, do you know whether the Citizens Association paid any of the expenses for any of those residents in connection with that? A. No, sir, the Association did not. All bills

67 had to be countersigned by the president.

* * * * *

70 BY THE COURT:

Q. I think I understood you to say, Captain Belin, that there was something like 38 places that the Association was interested in, or opposed to, restaurants in Georgetown? A. I think my statement ran something along these lines, that there are exhibits, approximately 38 or 39, restaurants with Class C licenses along M Street and up Wisconsin Avenue.

Q. 38? I remember you saying 38. A. Approximately, sir.

Q. Now, of those 38, has the Association gone on record in opposing the renewal of the applications when they came up for renewal, of those 38 places, on M Street and Wisconsin Avenue? A. No, sir, the answer is that the Association has opposed the issuance of licenses in 4 cases.

Q. And which 4 were they? The ones that are involved here?

A. The Corral, the Peppermint Lounge, the Crazy Horse and the Steak Pit, and Town House, the fifth one.

Q. The Crazy Horse was renewed; that is correct, isn't it? A. It has been issued.

Q. That leaves 3 applicants involved in this proceeding, that the Association has opposed; is that correct? A. Except, sir, that we do state that we support the opposition of the neighborly group in the case of the Roundtable.

* * * * *

72 Q. As I understand it now, as the record stands, there are about 4 or 5 out of 38 that your Association has opposed? A. Correct, sir.

* * * * *

78 MR. BURKA: May I just ask the Court one word of guidance?

Did I understand the Court to say that in the event of cross motions for summary judgment, you must stick strictly with the record before the Board?

79

THE COURT: The record made before the Board. I am not going to go outside that record. I will have to decide the case purely on a question of law, that is all.

MR. BURKA: Then no mention could be made of the matters discovered in these past few days?

THE COURT: I don't think so. I don't see how you are going to inject some of the things that you have been talking about in the testimony of Captain Belin and Mr. Wyckoff on a motion for summary judgment. The very purpose of a motion for summary judgment, or one of the purposes is, so that we won't have to take any more testimony. That is something for you to think about.

* * * * *

THE COURT: Well, it seems to me that if the plaintiffs would like to come into Court and proceed on their application for a temporary injunction, it may be necessary to bring these people back and make a record. This is not part of the record yet. This is the same as if you had been taking depositions before a notary public, except that you have a Judge presiding.

Now, the question of the admissibility of the evidence will take place at the hearing on the motion for a temporary injunction. It is just that simple.

* * * * *

[Filed April 5, 1966]

ORDER

The Court, having considered testimony and other evidence in connection with plaintiffs' motion for preliminary injunction, and having considered defendants' motion for summary judgment, the memoranda of points and authorities in support thereof and in opposition thereto, and the exhibits attached to the pleadings, and having heard oral argument in open court, it is, by the Court, this 5th day of April, 1966,

ORDERED, ADJUDGED AND DECREED as follows:

(1) That defendants' motion for summary judgment be, and the same is hereby, granted.

(2) That plaintiffs' motion for preliminary injunction be, and the same is hereby, dismissed as moot, and the complaint be, and the same is hereby, dismissed.

(3) That counsel for plaintiffs having advised this Court that Notice of Appeal to the United States Circuit Court of Appeals for the District of Columbia Circuit will be filed within five (5) days from the date hereof, defendants and each of them, their agents, successors, employees, attorneys, and all persons in active concert of participation with them, be, and they are hereby, enjoined until final decision of plaintiffs' said appeal by said United States Circuit Court of Appeals for the District of Columbia Circuit from interfering with the continued operation of plaintiffs'

restaurants known as the "Peppermint Lounge", 3263 M Street, N. W., and the "Corral", 3267 M Street, N. W., in the District of Columbia as retail Class "C" licensees, with all rights, privileges, and obligations of such retail Class "C" licensees, pursuant to the Alcoholic Beverage Control Act and Regulations promulgated thereunder.

/s/ John J. Sirica
JUDGE

[Certificate of Service]

[Filed April 11, 1966]

NOTICE OF APPEAL

Notice is hereby given this 11th day of April, 1966, that KAYCEE, INC. AND SEABRIGHT, INC., the Plaintiffs, hereby appeal to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of April, 1966 in favor of Defendants, Joy R. Simonson, et al. and The Citizens Association of Georgetown against said Plaintiffs, Kaycee, Inc. and Seabright, Inc.

James F. O'Donnell
Denis K. Lane

By: /s/ James F. O'Donnell
Attorneys for Plaintiffs

[Certificate of Service]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARBER, INC.)	
T/A ROUNDTABLE RESTAURANT)	
2813 M St., N. W.)	
Washington, D. C.)	
Plaintiff,)	
vs.)	Civil Action No. 235-66
Joy R. Simonson,)	
James G. Tyson)	
and)	
J. Bernard Wyckoff)	
as members of the Alcoholic Beverage)	
Control Board of the District)	
of Columbia)	
District Building)	
Washington, D. C.)	
Defendants.)	

RELEVANT DOCKET ENTRIES

<u>Date</u>	<u>Proceedings</u>
<u>1966</u>	
Jan. 31	Complaint, appearance, Exhibit
Jan. 31	Summons, copies (1) and copies (1) of Complaint issued
Jan. 31	Motion of Pltf. for Preliminary Injunction. Filed
Jan. 31	Motion of Pltf. for Temporary Restraining Order; P & A ***
Jan. 31	Temporary Restraining Order prohibiting defts. from interfering with continued operation of pltf's restaurant at 2813 M St., N. W., as a Retail Class "C" license, etc.; this order to expire on Feb. 3, 1966, unless extended; hearing on Motion for preliminary injunction set for Feb. 3, 1966 at 10:00 A.M.; * * * Gasch, J.

<u>Date</u>	<u>Proceedings</u>
<u>1966</u>	
Jan. 31	Undertaking of Carber, Inc. ***
Jan. 31	Deposit of \$250.00 cash as security ***
Feb. 1	Summons, copies ***
Feb. 3	Consent Order continuing temporary restraining order in effect and continuing hearing on motion for preliminary injunction to March 1, 1966 (N) Gasch, J.
Feb. 23	Motion to intervene by Mr. & Mrs. Gardner E. Palmer, Miss Mary and Dorothy L. McGrabe, Mr. & Mrs. Kermit S. Murphy, Mr. & Mrs. R. Michael Duncan, Mr. Cleveland McCauley, Mr. Leigh M. Miller, Miss Mary E. McDonald, Mr. & Mrs. Tetson J. Meyers and Mr. Arthur C. Moore, P&A; c/s 2/23/66; exhibit; appearance ***
Mar. 2	Notice by pltf to take deposition of Hon. J. Bernard Wyckoff; *** Filed
Mar. 2	Consent order continuing hearing on motion for preliminary injunction until 3/29/66 and directing motions for summary judgment be heard on same date (N) Sirica, J.
Mar. 4	Motion of defts to quash deposition and to bar discovery; ***
Mar. 4	Order granting leave to Mr. and Mrs. Gardner E. Palmer, Misses Mary and Dorothy L. McGrade, Mr. and Mrs. Kermit S. Murphy, Mr. and Mrs. R. Michael Duncan, Mrs. Cleveland McCauley, Mr. Leigh M. Miller, Miss Mary E. McDonald, Mr. and Mrs. Tetson J. Meyers and Mr. Arthur C. Moore to intervene as defendants (N) Sirica, J.
Mar. 4	Answer of intervenor to complaint. Filed
Mar. 8	Memorandum of intervenor deft of P&A in support of defts' motion to quash *** Filed
Mar. 8	Opposition of pltf to defts motion to quash deposition and bar discovery ***
Mar. 9	Transcript of proceedings 2/25/66 ***
Mar. 9	Motion of defts for summary judgment; P&A; statement; Exhib. A-1 (3 Vols); certification of record; affidavit; exhibits A-2 thru A-8; ***
Mar. 11	Appearance of Jacob A. Stein as atty for pltf. Filed
Mar. 14	Notice by pltf to take deposition of Captain Peter Belin ***

<u>Date</u>	<u>Proceedings</u>
<u>1966</u>	
Mar. 17	Memorandum of law of pltf; * * *
Mar. 21	Answer of defts 1, 2 & 3 to complaint; * * *
Mar. 22	Depositions of J. Bernard Wyckoff 3/11/66 and 3/14/66 ***
Mar. 24	Deposition of Capt. Peter Belin * * *
Mar. 28	Memorandum of P&A of intervenors in opposition to pltf's motion for preliminary injunction and in support of defts' motion for summary judgment * * *
Apr. 5	Order granting motion of defts for summary judgment and dismissing complaint and motion of pltf's for preliminary injunction; enjoining defts until final decision made in USCA. (N) Sirica, J.
Apr. 11	Notice of appeal by pltf from order of 4/5/66 * * *
Apr. 28	Consent order authorizing counsel for appellees to withdraw all exhibits and directing exhibits be returned to Clerk of Court on or before 5/10/66 (N) Sirica, J.
May 3	Transcripts of proceedings (2 vols.) 3/4/66, pp. 1 to 29, 3/29/66, pp. 1 to 49. * * * Filed

1

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

----- X
IN RE: CARBER, INC. :
T/A Kingdom Klub :
Applicant for a Retailer's Class "C" :
License at premises :
2813 M Street, N.W. :
Application No. 9061 :
----- X

WEDNESDAY, MAY 20, 1964

EXCERPTS FROM TRANSCRIPT OF
PROTEST HEARING

BEFORE:

JOY R. SIMONSON, Chairman of the Board
JAMES G. TYSON, Member of the Board
LOUIS N. NICHOLS, Member of the Board

* * * * *

5

GEORGE BERMAN

took the witness stand, for and in his own behalf as Applicant, and having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHANKMAN:

* * * * *

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Q. What type of a restaurant do you intend to run there, Mr. Berman? A. We intend to operate a restaurant opening at 10:00 in the morning and closing at 2, specializing in steak and roast beef.

Q. And is there any form of entertainment to be presented there? A. Possibly in the evening, if it will stimulate business. We contemplate using some type of entertainment. Possibly jazz artists or recorded music.

Q. Well, what type of trade are you seeking to get into this proposed restaurant? A. We seek a middle-aged clientele.

Q. I'm going to ask you now a direct question. Do you intend to use this place as a rock and roll place? A. No, we do not.

* * * * *

31

PVT. JOHN J. GOCKE

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took the witness stand, for and in behalf of the Protestants, and having been first duly sworn, was examined and testified as follows:

THE WITNESS: I am Private John J. Gocke. I am the License Officer at the 7th Precinct. Our precinct, technically has no objection to this restaurant going in.

At first we heard that it was going to be a rock and roll or jazz place and our captain was vigorously opposed to any such restaurant of this type going in. He was under the assumption that these jazz sessions would bring an undesirable element into the area and of course, his main concern is to protect the people of Georgetown. And, he has had several telephone calls in regards to the parking situation which we get into every-day and also of police nature as far as policing the place and such.

Everybody knows that we are short of policemen throughout the whole city, but I investigated their background and we had them twice up for interviews and they told us that they were strictly not going to have a low class establishment. So, under this presumption is why the captain more or less o.k'd. it with him as far as the precinct was concerned.

In this interview, Mr. Berman said he was not going to have any jazz sessions of the type we originally thought was going to go into this place.

* * * * *

[Filed June 1, 1964]

**FINDING OF FACT AND
CONCLUSIONS OF LAW**

The above named application, having been protested, came on before the Board for public hearing on May 20, 1964, at 10:00 A.M., the date designated by the Board, after due notice by publication and placard in accordance with Section 14(b) of the Act, providing for remonstrants to be heard.

The applicant Corporation's principal officers were present and were represented by Bernard Shankman, Esquire. George Berman, President of the Corporation testified that the application was for a Retailer's Class "C" license at a restaurant to be located at the above address seeking a middle-aged clientele and specializing in steaks, roast-beef, and other foods. While the Corporation planned entertainment such as jazz artists and recorded music, there would not be any "rock and roll" entertainment as such.

The protestants were, in the main, three citizens and the license officer of the 7th Precinct. Two of the citizens' objection complained of over commercialization of the M Street area, that there were already enough restaurants and outlets in the four block area including the premises herein, and that all four witnesses testified the parking situation would be intolerable. Except for the parking problem one of the witnesses testified she would have no objection to a "high class restaurant." The license officer's protest had been based on a report that the premises was to be used as a "rock and roll" place and would therefore attract undesirable to the neighborhood; however, after two interviews with the applicants the Precinct Captain had been convinced that the premises were not to be used as a "rock and roll" place and had withdrawn his objection on that score.

Letters were received and made part of the record, one in objection to the issuance of the license and another vouching for the integrity of the applicants.

After considering all of the above the Board Finds:

- (1) That the neighborhood as delineated by the Board is as follows:
Beginning at Rock Creek and Potomac Parkway and 26th Street N.W.; south on 26th Street N.W. to K St. N.W.; west on K St. N.W. to Thomas Jefferson St. N.W. north on Thomas Jefferson St. N.W. to M St. N.W. west on M St. N.W. to 31st St. N.W.; north on 31st St. N.W. to N St. N.W.; east on N St. N.W. to 30th St. N.W.; north on 30th St. N.W. to Dumbarton St. N.W.; East on Dumbarton St. N.W. to Rock Creek and Potomac Parkway.
- (2) That the applicant Corporation is duly qualified and each of its principal officers are citizens of the United States and meet the requirements of Section 14(a) 1 and 14(a) 2 of the Act.
- (3) That there is no church or school within 400 feet of the proposed location so that the provisions of Section 2-103 of the Regulations do not apply.
- (4) That no petitions were filed in connection with this hearing so that the provisions of Section 14(c) do not apply.
- (5) That the evidence submitted by the protestants is insufficient for the Board to consider as persuasive opposition to this application. The Board finds that the provisions of 14(a) 5 of the Act have been met.

CONCLUSION OF LAW

WHEREFORE, it is the Finding of the Board, this 1st day of June 1964, that premises 2813 M Street N.W. first floor, are appropriate for the license and that said license be and the same hereby is GRANTED and may issue if and when the applicant meets all the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF COLUMBIA

/s/ Joy R. Simonson
/s/ James G. Tyson
/s/ Louis N. Nichols

App.#9601
dla
June 1, 1964

EXCERPTS FROM
OBJECTION TO THE REISSUANCE OF
CLASS "C" LIQUOR LICENSE FOR
CARBER, INC., * * *

1/14/66

1. The following residents and/or owners of property in the neighborhood of 2813 M Street, N. W. hereby object and record their opposition to the reissuance or renewal of the Class "C" license to Carber, Inc., t/a The Roundtable, 2813 M Street, N. W., on the grounds set out below, and designate R. Michael Duncan, 224 Southern Building, N. W., to act for them as their attorney and representative in the filing of any further appropriate documents with the Board on this matter and in any hearing on the reissuance or renewal of said Class "C" liquor license:

(a) Mr. and Mrs. Gardner E. Palmer, who reside at and own the residence at 1219 29th Street, N. W.

(b) Miss Mary McGrade and Miss Dorothy L. McGrade, who reside at and own the residence at 1217 29th Street, N. W.

(c) Mr. and Mrs. Kermit S. Murphy, who reside at and own the residence at 1226 29th Street, N. W.

(d) Mr. and Mrs. R. Michael Duncan, who reside at and own the residence at 2706 Olive Avenue, N. W.

(e) Mrs. Cleveland McCauley, who owns the residences at 2708, 2710, 2714, 2730, 2732 and 2734 Olive Avenue, N. W. and 1225 28th Street, N. W., and, until September, 1965, resided at 2714 Olive Avenue, N. W.

(f) Mr. Leigh M. Miller, who resides at 2710 Olive Avenue, N. W., renting such residence from Mrs. McCauley.

(g) Miss Mary E. McDonald, who resides at and owns the residence at 2724 Olive Avenue, N. W.

(h) Mr. and Mrs. Tedson J. Meyers, who reside at the residence at 1237 28th Street, N. W.

(i) Mr. Arthur C. Moore, who resides at and owns the residence at 2728 Olive Ave., N. W.

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3. The President of Carber, Inc. misled the Board, the Police, and the neighborhood as to the type of establishment he would operate, and its operation of a rock and roll nightclub is not in accord with the Class "C" liquor license which it has been granted.

(a) Before the Board on May 20, 1964, in the protest hearing, Mr. Berman, President of Carber, Inc., testified under oath that:

"We intend to operate a restaurant opening at 10:00 in the morning and closing at 2:00, specializing in steaks and roast beef"

and that

"we seek a middle-aged clientele."

In response to a direct question as to whether he intended "to use this place as a rock and roll place," Mr. Berman stated, "No, we do not." (Transcript of the Proceedings of the Protest Hearing, p. 6). His counsel, Mr. Shankman, in response to a question, "Could we hear that there will not be a rock and roll club there?" stated, "We'd be delighted to state that," and that "we are just proposing it as a restaurant." (tr. pp. 22-23)

The testimony of Private John J. Gocke of the Seventh Precinct indicates that the licensee also misled the Police; he testified that the Captain of the Seventh Precinct at first "heard that it was going to be a rock and roll or jazz place" and "had been vigorously opposed to any such type of restaurant going in," but that on assurance that this was not the intended type of establishment, the Captain of the Seventh Precinct "more or less O.K'd it." (tr. p. 32)

(b) Despite these clear statements of intention to operate a bona fide restaurant, the Roundtable opened at the end of November, 1964, as a rock and roll nightclub catering principally to teen-agers. An admission fee is collected at the door and the establishment has had a noisy rock and roll band, a large dance floor and tiny tables. At no time has this establishment been operated as a "restaurant" as defined in Section 25-103(n) in accordance with the provisions of its Class "C" license.

(c) These misleading statements by the President of licensee in the hearing, under oath, are adequate grounds for denial of reissuance of the license. If the Board should be convinced that they were deliberately false, a charge of perjury would lie, and revocation would be appropriate under Section 25-115(d). The activities of the licensee in operating the Roundtable establishment as a rock and roll club, and not as a restaurant, constitute a violation of the provisions of Chapter 25 and a failure to carry out said provisions in good faith, which would be adequate ground for revocation of the license under Section 25-118. These misleading statements and these activities are certainly grounds for denial of reissuance.

(d) Licensee's statements, which misled the Board, the Police and the neighborhood, were such that this application should be considered by the Board as an initial matter, and the wishes of a majority of the property owners in the neighborhood should be determinative.

4. Licensee is applying for a reissuance of a Class "C" license, which by definition (under Section 25-111(g)) may be issued only "for a bona fide restaurant." Licensee has not operated a bona fide restaurant and its activities to date give no indication that it intends to do so. In fact, these activities demonstrate that it intends to operate a rock and roll nightclub catering to teen-agers, with its predominant source of revenue to be derived from admission charges at the door and sales of alcoholic beverages. The licensee has demonstrated that its President's statements of intentions to the Board, under oath, may not be relied upon. Since applicant's past course of conduct demonstrates that it has no intention of complying with the requirements of a Class "C" license to operate a bona fide restaurant, reissuance should be denied.

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[Filed January 24, 1966]

**MOTION THAT BOARD MEMBER J. BERNARD WYCKOFF
DISQUALIFY HIMSELF, ETC.**

Comes now Carber, Inc. and moves that Honorable J. Bernard Wyckoff, member of the Alcoholic Beverage Control Board, disqualify himself, or in the alternative, that the Board disqualify him, from any participation in the matter of application of Carber, Inc. for renewal of its Class "C" liquor license at premises 2813 M Street, Northwest, and for cause therefor, states as follows:

1. On January 17, 1966, in certain cases entitled "Application of 3259 M Street, Inc., t/a Crazy Horse and Mac's Pipe and Drum Inc., t/a Mac's Pipe and Drum, for renewal of Class "C" liquor licenses, Applications No. 9115 and No. 8348," Mr. Wyckoff filed affidavit, copy of which is attached hereto and prayed to be read as part hereof.
2. In such affidavit, Mr. Wyckoff makes the following statements:
 - (a) He was appointed as member of the Board on August 20, 1965.
 - (b) He has been a resident of Georgetown since 1922, and joined the Citizens Association of Georgetown several years ago.
 - (c) He was Chairman of the Parks Committee of the Association, and on May 10, 1965, was elected to the office of Secretary of such Association.
 - (d) Since receiving his appointment as member of the Board, he discontinued active participation in the Association, but remains on the mailing list of the Association and receives correspondence mailed to the membership at large.
3. Such Association has been the moving spirit in seeking to prevent renewal of Class "C" liquor licenses to various licensed premises on M Street, Northwest, including the Class "C" license presently held by applicant. On January 10, 1966, the Association voted to oppose the application of applicant for renewal of its liquor license at 2813 M Street, Northwest.

Prior to January 10, 1966, and subsequent to September, 1965, said Citizens Association of Georgetown has delivered to its members, including Mr. Wyckoff, news releases and other publications wherein incendiary and extreme statements were made concerning premises on M Street, Northwest, including that of the applicant.

4. At the hearing of this motion, evidence of such releases will be furnished to the Board. This evidence will include the following:

(a) Release dated September 1965, from the Citizens Association of Georgetown:

Referring to the licensees on M Street as "A cheap honky-tonk tavern strip" and stating:

"Each week thousands of tavern patrons swarm to Georgetown, many of them rowdies who spill into our residential neighborhood creating untold disturbances, vandalism, and parking violations."

* * * * *

"The decline of Georgetown because of excessive tavern activity in the M Street area is a double-edged tragedy:"

* * * * *

"It is also a decline for an irreplaceable historic district in the heart of the Nation's Capital."

* * * * *

". . . we know of (nothing) that has caused so much damage to residential quality and historic value as the 'Georgetown strip' in the Nation's Capital."

(b) Release dated November 1965, from the Association:

"CHEAP TAVERN STRIP ON M STREET

"Each week the cheap, honky-tonk tavern strip created by the District of Columbia Government in Georgetown's M Street area continues to draw thousands of undesirables, teenage drinkers and lawbreakers."

* * * * *

"The Association knows of no greater threat to in-city family residents and to the security of person and property in Georgetown than the few rotten apples in the barrel of otherwise reputable licensed restaurants."

(c) Release dated December 1965, from the Association:

"We believe the (proposed) amendment will aid in the rehabilitation of M Street"

(d) Release dated January 1966, from the Association:

"In August 1965 2,500 parking violations were recorded by Metropolitan Police Precinct No. 7 here the sum occurred during the very period when the number of restaurants granted liquor licenses just about doubled in Georgetown."

5. It is obvious that the above statements are of an inflammatory nature and present the views of a significant protestant to the application. These statements were included in releases prepared by the Citizens Association of Georgetown and knowingly addressed and sent to Mr. Wyckoff, although the Association knew that Mr. Wyckoff was then a member of the Board and would sit in judgment over the application of Carber, Inc. These communications amount to ex parte presentations to a Board Member in advance of the hearing.

6. The hearing herein is of substantial financial concern to the applicant and its stockholders. The evidence will demonstrate that such stockholders have an investment of over \$100,000 in the licensed premises and face bankruptcy in the event their application for renewal of their license should not be granted.

7. It is obvious from the above that substantial efforts have been made by the Citizens Association of Georgetown wrongfully to influence a Board Member and present to him ex parte the position of such Association with respect to matters to be determined by such Board Member as a member of the Board.

8. Such procedures by any party to any proceeding are in direct violation of law. In Seaboard Realty, Inc. v. Alcoholic Beverage Control Board, et al, United States District Court for the District of Columbia, Civil Action No. 1117-65, various representations were made to the Board on an ex-parte basis by a party to the application. Judge Matthews held that the ex-parte meeting deprived the other parties of a fair and impartial hearing.

In Jarrott v. Scrivener, Jr., United States District Court for the District of Columbia, 225 F. Supp. 827, 834 (1964), an application was made before the Board of Zoning Adjustment for the District of Columbia for an exception to permit the erection of an embassy building in a residentially zoned area. During the course of the proceedings certain officials of the United States communicated with two Board Members ex parte, indicating their position with respect to such application. The Court held that such ex-parte application deprived the protestants of a fair and impartial hearing and remanded the case back to the Board of Zoning Adjustment for a new hearing before a different Board.

At 225 F. Supp. 833, the District Court made the following Statement:

"The Board, like so many other quasi-judicial tribunals which have been created in recent years, performs judicial functions within its narrow and specialized jurisdiction. No authority would appear to be necessary to support the conclusion that in the performance of this adjudicatory function, the parties whose rights are involved are entitled to the same fairness, impartiality and independence of judgment as are expected in a court of law. Although procedures and rules of evidence are less rigid in quasi-judicial bodies than in courts, there can be no difference, under our concept of justice, between the two tribunals in respect of these fundamental requirements. As stated in National Labor Relations Board v. Phelps, 136 F.2d 562 (5th Cir. 1943):

" * * * '(F)or a fair trial by an unbiased and non-partisan trier of the facts is of the essence of the adjudicatory process as well when the judging is done in an administrative functionary as when it is done in a court by a judge. Indeed, if there is any difference, the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication where many of the safeguards which have been thrown around court proceedings have, in the interest of expedition and a supposed administrative efficiency been relaxed'."

At 225 F. Supp. 834, the Court made the following statement:

"Although the Board members denied being influenced by these contacts, and indeed one testified that he attached no significance to the letter of the Secretary of State, I am not required to give full and unqualified credence to such disclaimers, but should consider them in the light of experience and take into account the frailties and infirmities of human nature. In this connection, I need not explore beyond pointing out the following:

"As stated herein, two of the Board members, who were contacted and who voted in favor of granting the appeal, were relatively subordinate government employees and the contacts were made by highly placed officers of the Federal and District Governments. If nothing else, these two Board members were made to know that a favorable decision would be pleasing, and an unfavorable decision displeasing, to persons in very high governmental brackets. These officials possess vast power to bestow or not to bestow benefits of various kinds upon subordinate employees. The pressures were not crudely or indelicately exerted. There was no threat or command. There was no promise of reward. But the pressures were nevertheless real, and the Board members contacted could not fail to be aware that they

would incur administrative displeasure if they decided the appeal unfavorably. Contacts of this kind, regrettably, are not new. Some are the products of venality and corruption. Those involved herein were not, and I wish to make that point clear. However, the end result is the same, and the technique does not vary greatly. It involves an assurance that there is no thought of asking the person contacted to do other than his duty, followed by an expression of hope that his duty will incline him in the direction desired. In the vernacular, which is always more picturesque and frequently more expressive than legal jargon, this insidious approach is known as the 'soft approach' or 'soft touch.'

"I therefore conclude that the ex parte, secret contacts here were of a character which deprived plaintiffs of a fair and impartial hearing."

It is quite clear that the excerpt referred to above is particularly applicable here. The applicant does not charge intentional wrongdoing on the part of anyone. And according to Mr. Wyckoff's affidavit, it is also clear that he feels that his independence of judgment has not been impaired. However, as the District Court said, we must take into account "the frailties and infirmities of human nature." In this case, Mr. Wyckoff was approached by an Association of which he was a member for many years and in which he had attained high honor. Unquestionably many of the members of the Association are personal friends. It also appears as a matter of record that Mr. Wyckoff lives in the neighborhood. We are therefore dealing with neighbors as well as friends. In the words of the District Court, "the pressures (are) . . . real" and Mr. Wyckoff cannot "fail to be aware that (he) would incur . . . displeasure if (he) decided the appeal unfavorably."

It is submitted that the above case is dispositive of the issues herein. However, this principle has been enunciated by the United States Court of

Appeals of the District of Columbia in many cases recently. Among such cases are the following:

- (a) Sangamon Valley Television Corp. v. U.S., 106 U.S. App. D.C. 30 (1959).

Various interested parties sent personal letters to certain members of the Federal Communications Commission indicating arguments in favor of a protestant. Since these were personal letters they did not go into the public record.

At 106 U.S. App. D.C. 33, the United States Court of Appeals said:

"Interested attempts 'to influence any member of the Commission' . . . except by the recognized and public processes go 'to the very core of the Commission's quasi-judicial powers . . .'."

* * * * *

"Accordingly the private approaches to the members of the Commission vitiated its action and the proceeding must be reopened."

- (b) WKAT v. Federal Communications Commission, 103 U.S. App. D.C. 324, 258 F.2d 418 (1958).

That case condemned ex parte influence and made the following statement (111 U.S. App. D.C. 253, 296 F.2d 375):

"Surreptitious evidence to influence an official charged with the duty of deciding contested issues upon an open record in accord with basic principles of our jurisprudence, eat at the very heart of our system of government — due process, fair play, open proceedings, unbiased, uninfluenced decision."

- (c) WORZ, Inc. v. F. C. C., 106 U.S. App. 14, 268 F.2d 889.

"(T)here was similarly an appeal from an order of the Commission by a protestant on an application for a construction permit for a television channel. It appeared from the testimony before a subcommittee of Congress that while the case was pending before the Commission certain representations were made to a member of the Commission regarding the qualifications of one of the applicants, and the Court held that the case should be

remanded with instructions to hold an evidential hearing to determine the nature and source of all ex parte pleas and other approaches made to the Commissioners while the proceedings were pending."

CONCLUSION

As stated above, no criticism is herein made of Mr. Wyckoff whom counsel knows is of the highest integrity and for whom counsel has the highest regard. However, by the ex parte representations referred to above there has been tampering by an interested party affecting the quasi-judicial process. It is a basic tenet of our judicial system that a party should not attempt to influence the judge's decision in the absence of the other party. Such conduct is covered by Canon 17 of the American Bar Association Canons of Judicial Ethics and by Canons 3 and 23 of the American Bar Association Canons of Professional Ethics. Every writer on administrative law processes refers to the requirement of fair play and elementary standards of fairness and impartiality.

See Davis' "Administrative Law Treatise", Section 804, page 525, and Honorable E. Barrett Prettyman's "Lectures On Administrative Law Before The University of Virginia."

It is important not only that the administrative hearing be fair, but that it have the appearance of fairness.

In view thereof, the motion should be granted.

Respectfully submitted,
BINDEMAN AND BURKA
By /s/ J. E. Bindeman
Attorneys for Applicant
* * *

[Certificate of Service]

NOTICE

PLEASE TAKE NOTE that this Motion will be called to the attention of the Alcoholic Beverage Control Board as a preliminary matter prior to the hearing on Application of Carber, Inc., to be held January 25, 1966, at 10 a.m.

BINDEMAN AND BURKA
/s/ J. E. Bindeman
* * *

[Filed January 24, 1966]

AFFIDAVIT OF J. BERNARD WYCKOFF

J. Bernard Wyckoff, being first duly sworn, on oath deposes and says:

I am a Member of the Alcoholic Beverage Control Board in the District of Columbia, having been appointed to that position by the Commissioners of the District of Columbia on August 20, 1965.

I have been a resident of Georgetown since 1922 and, during that time, a member of a citizens' association. I joined the Citizens Association of Georgetown several years ago. Prior to my appointment as an Alcoholic Beverage Control Board Member, I was chairman of the Parks Committee of the Association and, on May 10, 1965, was elected to the office of secretary in the same Association. Upon receiving the appointment as a member of the Alcoholic Beverage Control Board, I have discontinued active participation in the Association and no longer attend Association meetings. I am, however, on the mailing list of the Association and receive correspondence mailed to the membership at large.

With respect to the instant applications I had no recollection concerning these establishments prior to my appointment as member of the Alcoholic Beverage Control Board. I do not know the individuals associated with the applications. Such familiarity as I have with the licensed premises has come only from an examination of the official records of the Board. Moreover, from my perusal of those records I note that the Citizens Association of Georgetown did not participate in the protest regarding the 1965 license for 3259 M Street, Inc., t/a Crazy Horse. Further, no protests were filed with the Board regarding the 1965 license for Mac's Pipe and Drum, Inc., t/a Mac's Pipe and Drum.

With respect to these applications or any other premises holding an alcoholic beverage license in Georgetown, I state that I have never been approached by any member of the Citizens Association of Georgetown or by any other person concerning these licensed premises. I did

not know that these applications were to be protested by the citizens' association until an article to that effect appeared in the Washington Post on January 11, 1966.

I have no bias concerning the instant applications for any reason whatsoever and will decide the merits of these applications upon the facts presented to the Board, upon material contained in the administrative record, and upon the prevailing law.

/s/ J. Bernard Wyckoff
Member, Alcoholic Beverage Control
Board

[JURAT the 17th day of January, 1966]

[Filed January 24, 1966]

**PROTESTANTS' REPLY TO APPLICANT'S MOTION
FOR DISQUALIFICATION OF BOARD MEMBER
J. BERNARD WYCKOFF**

Comes now Protestants, by their attorney, and replies to the motion made by Carber, Inc. that Honorable J. Bernard Wyckoff, member of the Alcoholic Beverage Control Board, disqualify himself or be disqualified from any participation in the matter of Carber's application for a renewal of its Class "C" liquor license at premises 2813 M Street, N. W., and states as follows:

1. Applicant's motion fails to demonstrate that the Georgetown Citizens Association (the "Association") is a protestant to Carber's application. The Protestants are a group of neighborhood property owners and residents, not the Association. Contrary to the statement in the second sentence of paragraph 3 of applicant's motion, the Association did not vote to oppose applicant's renewal application at its general meeting on January 10, 1966, and the Association has entered no appearance in this matter. It is the understanding of the undersigned that the members of the Association, at the meeting on January 10, 1966, adopted a resolution voicing its

support for the group of neighborhood Protestants in their opposition to Carber's application.

2. Even if the Association could be viewed as an interested party, Mr. Wyckoff in his affidavit of January 17, 1966, states that he is no longer active in the Association. In his affidavit, Mr. Wyckoff also recites that he has not been approached by any member of the Association with respect to the application of the Crazy Horse and Mac's Pipe and Drum, Inc. therein involved, "or any other premises holding an alcoholic beverage license in Georgetown."

3. Thus, applicant's motion depends completely on the fact that Mr. Wyckoff has continued to be on the Association's mailing list and has allegedly received certain alleged notices and releases sent out by the Association, of which the undersigned has no knowledge. This factual basis for the motion for disqualification is patently inadequate, and the cases cited by applicant, all of which involve (a) direct contacts, (b) usually secret, and (c) concerning the very matter before the administrative board, cannot be extended to apply to this situation. To equate the newsletters of the Association with the direct contacts of high officials of the United States Government (including a letter from the Secretary of State to the Special Advisor to the President of the United States), stretches the holding of Jarrott v. Scrivener, 225 F. Supp. 827 (1964) beyond bounds. A copy of this decision is attached for the Board's convenience.

CONCLUSION

There is no factual reason or legal authority supporting the disqualification of Board member J. Bernard Wyckoff. Applicant's motion should be denied.

Respectfully submitted,
/s/ R. Michael Duncan
Attorney for Protestants
* * *

[Certificate of Service]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

1 BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
 IN THE DISTRICT OF COLUMBIA

----- X
IN RE: CARBER, INCORPORATED
 t/a Roundtable Restaurant
 Applicant for renewal of a Retailer's Class "C"
 License #W790 at premises
 2813 M Street, N. W.
 Application Number 9061
----- X

TUESDAY, JANUARY 25, 1966

PROTEST HEARINGVOLUME I

BEFORE:

JOY R. SIMONSON, Chairman of the Board
JAMES G. TYSON, Member of the Board
J. BERNARD WYCKOFF, Member of the Board

* * * * *

4 THE CHAIRMAN: Mr. Zimmer.

I believe Mr. Bindeman you have a preliminary motion. Do you wish to take it up at this time?

MR. BINDEMAN: May I be heard on that at the present time?

If the Board please, I have issued a subpoena to Mr. Evans the Secretary of the Citizens Association of Georgetown. I should like to put him on the stand first in order to elicit facts upon which my motion is based. Is Mr. Evans in the room?

* * * * *

THE CHAIRMAN: * * *

5 I might state for the record that we are now taking argument on a motion filed by Mr. Bindeman on behalf of his client as of yesterday. Motion that Board Member J. Bernard Wyckoff disqualify himself, et cetera.

MR. DUNCAN: Madam Chairman, I have a reply to this which was served on Mr. Bindeman last night and was delivered up to the Board also.

THE CHAIRMAN: Thank you.

* * * *

ROBERT FRANCIS EVANS

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

Q. Would you state your full name, please? A. Robert Francis Evans, Colonel, United States Army, Retired.

Q. Colonel Evans do you have any official capacity with the Citizens Association of Georgetown? A. I am the Secretary of the Citizens Association.

* * * *

14 Q. Colonel Evans, in order that we may shorten these proceedings, Mr. Greer and I have taken from the file which you have handed me various news bulletins and other publications. Were each of these sent to every member of the Association who appear on your mailing lists? A. To the best of my knowledge they were sent to every member.

Q. So a copy of each of these items which I'm about to introduce in evidence would have been sent to Mr. Wyckoff as an active member of your association? A. That is correct.

MR. BINDEMAN: If the Board please, I want to offer in evidence --

MR. DUNCAN: Did you show the witness the post card?

MR. BINDEMAN: Well, I was going to come to that in logical order, if you don't mind.

MR. DUNCAN: Oh, o.k.

* * * *

CROSS-EXAMINATION

26

BY MR. DUNCAN:

Q. Colonel Evans, do you know whether any of the so-called news-letters have any reference whatsoever to this applicant? A. In my reading of them I have seen no reference to the applicant.

* * * *

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REDIRECT EXAMINATION

BY MR. BINDEMAN:

Q. Colonel Evans, did the Association take any formal action on the application of Carber, Incorporated for the renewal of its license at 2813 M Street, Northwest? A. At the meeting of January 10th, on motion duly made and seconded the Association resolved to support the residents and property owners in the vicinity of this establishment in their opposition to the granting of the Class "C" license for 1966.

Q. Did you say the motion was made or the motion was passed?

A. Motion duly made and duly seconded and passed.

Q. What has the Association done to effectuate its motion to support the residents in their opposition? A. For one matter it has sent out this post card informing the membership when the meetings would take place, would take place. Of concrete documentary action I would say that was the only one. The very passage however, of the resolution by the membership was an act of support.

29

Q. Did the Association pay for any releases sent out by residents of the area of 2813 M Street? A. I'm not the Treasurer. It is my belief that the Association has not paid for any such --

Q. But you don't know? A. I don't know that for a fact but I myself have reasons to believe it is true.

Q. Do I understand from your Counsel that the Association is not entering a protest at this hearing today on Carber's application? A. That is correct.

Q. Now, since the Association has taken an active part in protests of other applications on M Street could we construe this inactivity as an indication that the Association does not feel as strongly about this application as it has felt about the previous applications?

* * * * *

30

THE WITNESS: It is my opinion that the Association feels equally strongly about this application.

* * * * *

34 THE CHAIRMAN: Colonel, could you tell me what the membership year of the Association is? Is it January to January or what is it?

THE WITNESS: No. The membership year follows the election. If I am correct it would run from May to May. It is neither a fiscal or a calendar year. When the new officers are elected, you start a new year.

* * * * *

RECROSS-EXAMINATION

BY MR. DUNCAN:

Q. Colonel Evans, do you know whether the appropriate officers of the Association were approached prior to the hearing -- excuse me, prior to the Association meeting on January 10, and informed that a neighborhood group had retained Counsel to protest the Carber application?

* * * * *

35 A. It is my understanding that officers of the Association knew at that time that there was being formed a neighborhood group to oppose the granting of this license.

* * * * *

37 MR. BINDEMAN: Now, if the Board please, if I may be heard with respect to this motion upon the factual basis which has now been adduced and is a matter of record.

I should say first that I bring this motion most reluctantly and after a great deal of thought because I know of the high integrity of Mr. Wyckoff and Mr. Wyckoff knows I have for him a very high regard based upon some acquaintance of Mr. Wyckoff that goes back many, many years. I would say too, and I want to make it very clear that I accept Mr. Wyckoff's affidavit, as I should and must, as the entire truth without any reference or innuendo or implication that what he has given in his affidavit of January 17, is not completely in accordance with the fact. The disturbance here and the evil here is caused by the Citizens Association of Georgetown, aggravated if you please by their admission today, after motions were filed in other cases, they did not send one release to Mr. Wyckoff which

indicates to me if they did it then they could have done it before. It is the Association, I charge which has put Mr. Wyckoff in a most untenable position.

* * * * *

47 THE CHAIRMAN: The hearing will please come to order.

The Board has considered the briefs and the arguments on this motion and all three members have conferred and we wish to state at this time that the affidavit filed by Mr. Wyckoff in previous similar cases applies with equal force in this case and will be made a part of this record with the reference being changed to the instant application and on the basis of that affidavit applying to this case the motion is herewith denied.

Now, as Counsel probably knows, in similar cases we have offered the applicant the opportunity if he wishes to appeal to the Court on this motion. We will suspend the hearing, but of course we must point out the obvious end of the license year is approaching.

48 MR. BINDEMAN: An appeal at this point in my judgment would be premature so that I think that the law requires that we proceed.

I would like to have the record show if this were a unanimous decision and if Mr. Wyckoff participated in the decision.

THE CHAIRMAN: He did and it was a unanimous decision.

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CHARLES FULTON McGEHEE

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DIRECT EXAMINATION

BY MR. BINDEMAN:

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49 Q. And your position is what, sir? A. Zoning Analyst, District Zoning Commission.

* * * * *

Q. Referring to the area on M Street, between Rock Creek Parkway and 31st Street, show us first Rock Creek Parkway. A. (Indicating)

* * * * *

Q. How is the area zoned on either side of M Street? A. 31st, going east back to the park would be C-2 back to, all the way to the Government property.

Q. Take north from M Street. How far does that C-2 zoning extend?

* * * *

50 A. North. It extends north generally to the lots which front on M Street.

Q. So that it doesn't go back as far north as Olive Street, does it?

A. No, it doesn't.

Q. Is that C-2 area the one that's colored pink? A. That's correct.

Q. Now, south of M Street, how far does the C-2 zoning apply?

A. That is generally a pattern that takes in the frontage on M Street. There could be some instances that a few lots may go on the north-south streets but generally the pattern is the frontage on M Street.

Q. Just to clarify that Mr. McGehee the lots which front on M Street, both north and south of M Street are zoned, C-2? A. That's correct.

Q. Now, let's go in back of the C-2 area, north of M Street. How is that zoned? A. R-3.

* * * *

51 Q. And that R-3, is what use? A. Single family residential row houses.

Q. Now let's go south of M Street below the lots which front M Street, how is that zoned? A. CM-2.

Q. Is there any zoning of M? A. Yes, on Thomas Jefferson, south of the Canal and all, I call water-front area.

Q. Is that fronting K Street? A. Fronting K Street, that's correct.

Q. So you've got CM-2 and M, is that correct? A. That's correct.

Q. What is CM-2? A. CM-2 is a commercial and light manufacturing with what we call a medium bulk.

Q. And what is M? A. M is the industrial area that allows anything that is allowed in the city.

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61

PRIVATE JAMES JOHNSON

* * * *

62

DIRECT EXAMINATION

BY MR. BINDEMAN:

Q. Officer, would you please state your full name? A. Private James P. Johnson, attached to Number 7 Precinct.

Q. How long have you been an officer? A. Nineteen years, sir.

Q. How long have you been attached to the 7th Precinct? A. Seventeen years, sir.

* * * *

63

Q. Since November 1964 are you in a position to estimate approximately how many times you visited the Roundtable Restaurant? A. About 250 times, 300 times, I imagine.

Q. During those 250 or 300 times that you visited the restaurant have you ever seen any violation of law in the inside of these premises? A. No, sir I haven't.

Q. Have you ever seen any disorder? A. No, sir I have not.

Q. Have you ever seen anybody intoxicated? A. No, sir. Not inside the restaurant.

* * * *

66

CROSS EXAMINATION

BY MR. DUNCAN:

* * * *

Q. Did you recently arrest a person for disorderly conduct in the 1200 block of 28th Street? A. Yes, sir. I did.

Q. When was that? A. About two weeks ago, sir.

Q. How old was the person you arrested? A. 18.

Q. Do you remember whether he was from the District or outside of the District? A. I think he lived some place in Maryland.

67

Q. What was he doing? A. He was using profane language and he jumped on an automobile that was parked on the street.

Q. Where was this on? A. 1200 block of 28 Street, number 1210.

* * * *

68 Q. Where is the 1200 block of 28th Street? A. The 1200 block of 28th Street is around the corner from M.

* * * *

Q. * * * At what time did you arrest this young man? What time of the day? A. It was at night. It was dark and I don't remember whether I was working 4 to 12 or midnight.

Q. It was around midnight? Towards midnight? A. About that time, yes, sir.

Q. You said he was using profanity and being loud and boisterous? A. Yes, loud and boisterous and jumped up on a car that was parked on the street, sir.

Q. He jumped up on the car? You mean he got on top of it? A. He jumped on the trunk of the car which is at the back of it.

* * * *

69 Q. As a beat patrolman in this area have neighbors expressed complaints to you with respect to similar incidents? A. Yes, sir.

Q. Has it been your experience there have been a number of such complaints? A. A few.

Q. Have people in the area complained to you about other matters such as public urination, vandalism? A. Yes, sir. There have been complaints to that effect.

Q. Do you have personal knowledge of any such incidents in the area close to 2813 M Street? A. Well, public urination, yes, sir.

Q. Do you have any knowledge with respect to the snapping of aerials on parked cars in that area? A. Yes.

Q. Could you state the incidents you have knowledge about? A. Well, one night, I don't know exactly what night it was, but there's been several complaints made where aerials were snapped off in the area of Olive Avenue and 29th Street.

* * * *

70 Q. What about the public urination complaints that you've heard? Could you tell us how many of those there were? A. No, sir. Not in number but there have been some.

Q. Have you ever seen any of this? A. Yes, sir. I've made arrests for that.

Q. In what blocks were these? A. 2800 block of Olive Avenue.

* * * *

Q. Is that the block immediately behind the Roundtable? A. Yes, sir.

* * * *

Q. With respect to the aerial snapping that you testified to, would you remember where that was? A. Well, this was on 29th Street between Olive Avenue and N.

* * * *

71 Q. What time of day was the public urination that you witnessed?

A. This was at night also, around midnight.

Q. How old were the people that you witnessed doing this? A. They were teen-agers between 18 and 19.

Q. Did you arrest them for this? A. Yes, sir.

* * * *

Q. How many of these young gentlemen did you arrest for doing this? A. For public urination and disorderly?

Q. Yes. A. I would say five or six over the past year.

* * * *

72 Q. Have there been complaints by persons living in the neighborhood to you with respect to damage to property other than the radio aerial incident we talked about? A. Well, not personally to me, but complaints have been called into the station and put on the complaint book and assigned to the officer running the beat.

Q. You know of your own knowledge that there have been such complaints? A. Yes, sir.

Q. Do you recall any specific complaint? A. Well, if you call a flower box property damage.

Q. You recall some complaints with respect to a flower box? A. There was a flower box on 28th Street destroyed, pulled out of the ground and destroyed.

Q. Do you remember what block in 28th Street that was? A. 1200 block, sir.

* * * *

73 Q. Now, parking problems. Do you know whether the 7th Precinct had a tow truck that was active in this area on week ends ever during the summer? A. I believe so, sir.

* * * *

74 Q. Did you notice that the corner of 28th and Olive and 29th and Olive are particularly fruitful areas for that tow truck?

* * * *

THE CHAIRMAN: Well, do you feel you can be more specific about what you have seen the tow truck doing or not?

THE WITNESS: Well, I've seen them tow away automobiles parked on the corner from fire hydrants and things of that sort.

MR. DUNCAN: Madam Chairman, I'd like to have the witness say whether he noticed this particularly at the corner of 28th and Olive and 29th and Olive.

THE WITNESS: Yes, sir.

BY MR. DUNCAN:

Q. Have you, Patrolman Johnson, have you had any complaints from members of the neighborhood with respect to litter and trash left in the streets in this area? A. Well, beer cans and things of that sort.

Q. Have you noticed beer cans in the streets? A. Yes, sir.

75 Q. Have you noticed an increase in the number of beer cans left in the streets in the last year? A. Well, in general, yes, sir.

* * * *

77 COLONEL ROBERT F. WHEELER

78 DIRECT EXAMINATION

BY MR. BINDEMAN:

Q. What is your occupation? A. I'm appearing before this Board this morning as President of the Armed Forces Disciplinary Control Board.

79 Q. Colonel Wheeler, in the course of your position as Chairman of the Board, do you have occasion to receive any reports concerning the Roundtable Restaurant at 2813 M Street, Northwest? A. I have never received a complaint on the Roundtable.

Q. But do you have occasion to receive reports about its conduct. A. Yes, I do.

Q. Is that pursuant to investigation made by the members of the Military Police under your command? A. Yes, sir.

Q. Can you tell us approximately how frequently is the Roundtable Restaurant visited by members of the Armed Forces Police? A. I would say without question about once a night, at least.

Q. In the course of that investigation is it your testimony that you've never received an adverse report? A. I have never received an adverse report.

80 CROSS EXAMINATION

BY MR. ZIMMER:

86 Q. What were the people doing that were sitting there? A. As I recall, in the place there was a combo and some people were dancing.

87 Q. What kind of combo? Was it a rock and roll combo? A. Yes, yes.

89

REDIRECT EXAMINATION

BY MR. BINDEMAN:

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Q. Now, you testified that there came a time in September 1965, when somebody who represented himself as a civilian member of the Department of Defense, who made certain complaints to you and who talked for a good half hour, you said.

Did that gentleman tell you where he lived? A. Yes, he did. He told me he lived in Georgetown but I don't recall where at.

Q. Was he, or did he make specific reference to this restaurant?

A. Yes, as a matter of fact he did. He named off, as I recall five or six.

90

Q. What specifically did he ask you to do, Colonel? A. He asked me if we could not increase the patrols down there in the area.

Q. What did you tell him? A. I said yes I could.

Q. And did you in fact do that? A. I passed that information on to the then C.O. of the Armed Forces Police detachment.

Q. And do you know whether or not there were regular inspections being made after that complaint came in? A. If I am not mistaken there were inspections being made before this. However, about the best way to find out would be to ask someone, who was with the Armed Forces Police at that time.

Q. This gentleman who's name I understand you can't remember, who called you, identified himself as a member of the Department of Defense staff, did he say he was a member of the Citizens Association of Georgetown? A. Yes, he did.

Q. Did he claim to be speaking on behalf of the Association? A. Yes, he did.

Q. And he did make reference to the Roundtable Restaurant?

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A. Yes, plus about five others.

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93

THE WITNESS: And also the gentleman that was here, Mr. Greer, I believe it was Mr. Greer, has attempted to contact me twice on this.

FURTHER RECROSS EXAMINATION

BY MR. DUNCAN:

Q. With respect to the Roundtable? A. In respect to all, to all.

FURTHER REDIRECT EXAMINATION

BY MR. BINDEMAN:

Q. What did Mr. Greer say to you, Colonel? A. Unfortunately I did not talk to Mr. Greer because I was not in. However, my deputy at the Armed Forces Police did talk to him and after this call, this call I received from Mr. Greer which was approximately three weeks ago, approximately, the day following that I received another call from the same person who called me back in the Fall and the name I cannot recall, asking me if Mr. Greer had gotten in touch with me. I told him, no, Mr. Greer had not but he had talked to someone else. He said, at the time, "Didn't you tell me you had problems down there?", and he named them all off and

94 I said, "No, I never said a thing like that in my life." With that he said to me, "Well, I guess there's no need to have you appear before the Board."

Q. When he talked to you, did he identify Mr. Greer's capacity?

A. Yes, he did.

Q. What did he say Mr. Greer's capacity was? A. As I recall he said Mr. Greer was a lawyer representing the Georgetown Citizens' group.

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95

COLONEL ALFRED H. D. PERKINS

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. What is your position, sir? A. At the present time, Deputy Commander of the Armed Forces Police.

* * * *

97 Q. Would you know from your own personal recollection with respect to the Roundtable Restaurant, about the frequency of visits there by Armed Forces Police? A. Nightly.

Q. Have you ever had any adverse complaint from your military police? A. No, sir. I have not.

* * * *

98 Q. As far as you're concerned it is operated in accordance with the law? A. To the satisfaction of the military.

* * * *

CROSS EXAMINATION

BY MR. ZIMMER:

Q. Colonel Perkins, you say you visited the Roundtable six to eight times since February, 1965? A. That's a guess. I'd say yes. I am
99 around the District of Columbia at night, five, six or seven times a month. I don't always hit the Roundtable.

Q. Where do you usually go, sir? A. Well, normally the 14th and I area.

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106 PRIVATE ARNOLD B. REDMOND

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DIRECT EXAMINATION

BY MR. BINDEMAN:

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Q. What is your occupation, sir? A. I'm a policeman with the Metropolitan Police Department, 7th Precinct.

* * * *

107 Q. In your capacity as footman and in your capacity as an occupant of Scout Car 71, have you had occasion to go by the 2800 block of M Street, Northwest? A. Yes, sir.

Q. Did you ever have occasion to go into the Roundtable Restaurant at 2813 M Street, Northwest? A. Yes, sir.

Q. Could you estimate for us, officer, since February 1, 1965, approximately how many occasions you have been in this Roundtable Restaurant?

* * * *

108 Q. Five nights a week times roughly 50 weeks would be 250 occasions, would you say you'd been in there between 200 and 250 times in the last year? A. Yes, sir.

Q. Officer, in the course of your visiting these premises between 200 or 250 times during the past year, have you ever seen any violations of law? A. Are you speaking of the Roundtable?

Q. I'm talking about the Roundtable. A. No, sir. Are you saying inside, now?

Q. Inside, yes, sir. A. No, sir.

Q. Did you ever see any disorder on the inside? A. No, sir.

Q. Can you tell us whether in your judgment the operators of the Roundtable Restaurant attempt to run a respectable restaurant within the law? A. I would say they do, sir.

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114 CROSS EXAMINATION

BY MR. ZIMMER:

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116 Q. Do you recall any increase in noise or have you observed any increase in noise in this area during the past year? A. I'd have to say I've had more complaints recently, yes.

Q. How about your personal observation? Have you yourself seen more rowdiness or more raucousness or more noise in this area during the last year? A. I definitely would say, yes, there's been a bit more, yes.

* * * * *

118 Q. * * * Have you received any other type of complaints with respect to property damage? A. Yes, sir. We have had such -- not personally but on our record. You know, they put it on the complaint book and it is read at roll call. If it is on my beat I look into it.

Q. What type of complaints have you investigated personally?

119 A. Well, aside from the noise and parking there has been people -- well, talking to the elderly people in a way they didn't think they should be talked to. We have had those complaints.

Q. What type of way is that, obscene language? A. Yes, it was reported as obscene language.

Q. These are the type of complaints you've investigated? A. Yes, sir.

* * * *

120 Q. How about property damage complaints? Have you ever investigated property damage complaints for anyone in this hearing room? A. I have investigated complaints for one who is in this room, but I don't think it was a property damage complaint. The person or persons who she was complaining about threw trash on her front porch and there were some words passed.

* * * *

125 Q. I'll ask you the same question I asked about five minutes ago that, that's where did this incident with respect to the broken air conditioner in the window box take place? And the trash incident? A. This is Olive Avenue? (indicating)

* * * *

126 Q. So, this incident occurred approximately two and a half blocks from the Roundtable around the corner? A. Yes, sir.

Q. Would you also point out where the trash incident occurred? A. This was two or three doors, I don't know which, from where the air conditioning complaint was.

* * * *

130 Q. Did you ever investigate any complaints about snapped aerials or slashed tires? A. Yes, sir.

Q. How many complaints and when? A. I beg your pardon. Snapped aerials, yes. Slashed tires, no.

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132

DETECTIVE SERGEANT PASQUALE J. D'AMBROSIO

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

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133

Q. And what is your assignment? A. Detective Sergeant attached to Number 7 Precinct, Criminal Investigation.

Q. How long have you been attached to Number 7 Precinct? A. Ever since I've been in the Department.

Q. So for 24 years? A. Yes, sir.

* * * *

Q. Sergeant, in the course of your duty, do you have occasion to go into the Roundtable Restaurant? A. Yes, sir. A number of occasions.

Q. About how frequently on an average. A. At least once a week.

Q. In the course of your inspection once a week can you tell us whether or not the place is operated in a legal manner? A. Very much so.

* * * *

134

Q. Do you also get complete cooperation from the owners? A. Yes, sir.

Q. Can you tell us how that manifests itself? A. Well, for instance, we may be looking for an individual that may frequent some of these places we notify the management and request them if these particular people should come into the premises we'd appreciate it if they'd call us. They have done this on numerous occasions.

* * * *

136

CROSS EXAMINATION

BY MR. DUNCAN:

Q. Detective Sergeant, you referred to cooperation with the police on, I believe you said, several occasions on which you asked them to look for personnel or for persons who the police wished to arrest or wished to detain? A. Well they were people that we had under investigation. Let's put it this way, that there may have been something in connection with these

people that we wanted to check on and we were checking their activities.

Q. Did they ever inform you that such people had come into their establishment? A. Have they ever informed us?

137 Q. Yes. A. Sure, they've called us everytime they've gone into the place.

Q. Has this happened on a number of occasions? A. Well, I can think of ten or twelve times, yes.

Q. Now, these were people who the Metropolitan Police either wanted to either arrest or question? A. Not question. We're not allowed to do this too easily. We keep them under observation more or less to check on their activities.

Q. What type of personnel -- persons were these? Were these known criminals? A. Known criminals, yes, in certain instances. Suspected known criminals.

* * * * *

139 Q. Did you go in the Roundtable on the opening night? A. Yes, I did.

Q. When was that? Do you recall, approximately? A. I'm not sure of the date but it was open house. It wasn't open to the public.

Q. At that time did the establishment have a band? A. They had some sort of music there that was making some noise. However, whether it was rock and roll or waltz, after listening to some of it over a period of time all of it seems to sound the same. So, I couldn't say what type.

Q. But they had a band? A. Oh, yes.

Q. Were people dancing? A. Yes.

Q. What type of dancing was it? A. Well, some of it was jitterbug and some of them were doing these modern dances, the frug, the swim and what have you. I mean it all depends on the individuals themselves.

Q. This was opening night? A. That's right.

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140

DETECTIVE SERGEANT EMORY C. MINOR

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. Occupation? A. Detective Sergeant assigned to the Metropolitan Police Department.

Q. How long have you been a member of the Police Department?

A. I'm in my 19th year.

* * * *

141

Q. Now, prior to August 1, 1965, in your capacity as detective with Number 7, did you have occasion to visit the Roundtable Restaurant?

A. Yes, sir.

* * * *

142

Q. Is the place perfectly run as far as law abiding? A. Very much so as far as the Alcoholic Beverage Control Regulations is concerned.

* * * *

146

DETECTIVE THOMAS J. SULLIVAN

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. Occupation, sir? A. Metropolitan Policeman, Detective's Division.

Q. For how long? A. Nineteen years.

Q. What is your present assignment? A. Plainclothesman at the 7th Precinct.

* * * *

147

Q. In the course of your duty have you had occasion to visit the Roundtable? A. I do.

Q. Do you agree with the previous testimony from the Detectives and Privates about the conduct of the place? A. I do.

Q. Perfectly orderly as far as you're concerned. A. That's correct.

* * * *

Q. And no violation of law that you've witnessed? A. None that I've witnessed.

* * * *

149

PRIVATE SIDNEY CHAZEN

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. What is your occupation? A. I'm a Police Officer, Metropolitan Police Department assigned to the Juvenile Bureau.

Q. How long have you been a member of the Police Department?

A. Thirty-two years.

* * * *

150

Q. In the course of your duty attached to the Juvenile Bureau, have you had occasion to visit the Roundtable Restaurant? A. Yes, I have.

Q. What is the purpose of your visiting the Roundtable Restaurant, Officer? A. Well, our main objective in this going to these Alcoholic Beverage Control establishments is to see if they're serving underaged minors. Any violation that a minor might get involved in.

Q. In other words, your purpose is to ascertain whether there is any violation of law as pertains to juveniles. Is that right? A. Yes.

Q. Could you estimate since February 1965, on approximately how many occasions have you visited the Roundtable Restaurant? A. Since February 1965, I would say about 50 to 75.

* * * *

151

Q. In the course of your 50 to 75 visits have you ever seen violations of law? A. No, I haven't.

* * * *

152

CROSS EXAMINATION

BY MR. ZIMMER:

* * * *

Q. Isn't it correct that most of the tables are about 17 inches on
153 each side, about a foot and a half? A. Something like that.

* * * *

158

GEORGE W. WHISENANT

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. Your occupation is what, Sir? A. Metropolitan Policeman.

Q. How long? A. 23 years.

Q. What's your duty at the moment? A. Since 1960, Juvenile
Bureau, Youth Aid Division.

* * * *

159

Q. Officer, would you tell us if you have occasion to go into the
Roundtable Restaurant? A. When we work 4:00 o'clock section every
other week, we work day work to 4:00 o'clock, about every 5 months
roughly we work a couple of midnights, but not normally. So, we consid-
er ourselves day work and 4:00 o'clock section. On 4:00 o'clock section
we carry a roster in the cruiser of all Alcoholic Beverage Control estab-
lishments that juveniles would try to frequent, all dance halls or any en-
tertainment where juveniles would frequent. We have it on a list and we
check them out.

* * * *

160

Q. In those 25 or 50 times you visited the Roundtable Restaurant,
did you have occasion to check to see if there were any juveniles present?
A. That's mainly our purpose in an establishment.

* * * *

161

Q. Have you ever seen any violation of law in the Roundtable Res-
taurant? A. I haven't, no, Sir.

Q. As far as you're concerned, is the place well operated? A. I think very much so.

* * * *

176

RILEY B. CARTER

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

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Q. Are you an officer and member of the Board of Directors of Carber, Incorporated? A. Yes, I am.

* * * *

Q. The license was issued first in November of 1964, is that correct? A. (Witness nodded in the affirmative).

Q. You and Mr. George Berman are one-half owners of the stock, is that correct? A. Yes.

* * * *

183

MR. BINDEMAN: If the Board please, the Board remembers that I called as a witness Miss Alexander who did not respond. She had told me that she had only a limited amount of time and wanted to testify and leave. She will not be a long witness. I see that she has just walked in. I'm wondering if I might be allowed to take Mr. Carter off the stand and put her on because I'm sure examination and cross of Mr. Carter will be extensive.

MR. DUNCAN: No objection.

* * * *

JEAN SEARS ALEXANDER

* * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * *

Q. Where do you live? A. 1363 28th Street.

Q. Now, 1363 28th Street is on 28th between what and what? A. Between O and Dumbarton on the corner of O Street.

* * * *

189

FURTHER CROSS EXAMINATION

BY MR. DUNCAN:

Q. When you have been there, have you been there when the Walkers were playing? A. When the Walkers were playing?

Q. Yes. A. I just don't remember names of the bands. I've been there when different bands have been playing, of course.

Q. Were the bands that were playing, playing rock and roll music? A. Yes, oh, yes.

Q. When did you first go in there, Miss Alexander? A. Last -- early Spring, I'd say.

Q. March? A. March or April, I think. I can't remember exactly when.

Q. Did they have a rock and roll band when you were there then? A. Yes, to the best of my recollection.

* * * * *

190

RILEY B. CARTER

* * * * *

FURTHER DIRECT EXAMINATION

BY MR. BINDEMAN:

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196

Q. Mr. Carter, when you and Mr. Berman were going about your efforts to construct a restaurant in these premises from a garage building and to furbish it, did you make any effort to procure unusual fixtures? A. Yes, we did. We spent quite a number of weeks shopping around some of the specialty shops in Georgetown, looking at catalogs of wholesalers and picking out just unusual items for decor. We found most of them at Thieves Market in Alexandria.

Q. Did you also purchase some fixtures from the Raleigh Hotel? A. Right. When the Raleigh Hotel was torn down we bought a portion of the cocktail lounge there.

Q. Can you estimate to us what it cost for the construction, the total refurbishing and decorating of these premises including your kitchen

197 equipment, that you put in the business? A. In the neighborhood of \$85,000, \$90,000.

Q. Did you have that much cash? A. No, we did not.

Q. Approximately how much is due and owing on that original investment? A. Approximately \$50,000.

Q. With respect to the other \$40,000, did you have that cash or did you borrow that? A. No, that was borrowed.

Q. Was it borrowed from your family? A. Yes, sir.

* * * * *

Q. Let's take it this way. I don't want to confuse it.

You said it cost you between \$85,000 and \$90,000 to put the place in operation. You testified that you had about \$40,000 in cash and that you
198 owe about \$50,000. Now, my question is the \$40,000 that you paid in cash, some of that you borrowed. How much of that do you still owe? A. \$20,000.

Q. So that you owe a total of \$50,000 and \$20,000 or \$70,000. Is that about right? A. Yes, sir.

Q. And it cost you about \$90,000 and you still owe about \$70,000?
A. Yes, sir.

Q. Are you making regular payments on both the \$50,000 and that portion that you borrowed from your family and friends? A. Yes, sir.

Q. You then owe \$50,000, another \$20,000 and about \$26,000 on the lease, a total of some \$96,000, is that correct? A. Yes, sir.

Q. If this Board should see fit not to re-issue your license, could you continue as a restaurant? A. No, sir.

Q. Why do you think you could not continue as a restaurant? A. Well, the competition in the neighborhood would warrant a Class "C" license.

199 Q. Is it your feeling you couldn't operate a successful restaurant today without a Class "C" Liquor License? A. Yes, sir.

Q. Mr. Carter, if you could not continue as a restaurant and had to close, what would that do to your financial ability to pay this \$96,000?
A. Well, I would be bankrupt.

* * * * *

Q. Now, Mr. Carter, prior to your opening the Roundtable, what kind of an operation did you and Mr. Berman intend at these premises?

A. We fashioned the Roundtable after Basin Street East in New York, similar to a supper club. That's the operation we wanted.

Q. What is Basin Street East in New York, briefly? A. A supper club where people come in and eat and drink and see various forms of entertainment in a plush surrounding.

* * * * *

200 Q. Did you expect to specialize in any particular food? A. Yes, sir. We wanted to specialize in steak and roast beef.

Q. Did you plan any entertainment? A. Yes, sir. We contacted various booking agents and scores of entertainment.

Q. Did you tell the Board when you applied for the original license that you planned entertainment? A. Yes, sir.

Q. Now, what element of clientele did you hope to attract? A. Well, we wanted the older people because they spend more money and when I say older, I mean 35 years old and up.

Q. Will people like that be more apt to go out and have dinner?
A. Yes, sir.

Q. Would people of that age group be more apt to spend more money in a restaurant? A. Yes, sir.

* * * * *

202 Q. With respect to your efforts to attract an older clientele would
203 you tell the Board what you did in order to attempt to attract such customers? A. Well, to start off with we had an opening party, a promotional party. We invited the type of clientele we expected to be customers. Older people, 35 and up.

Q. Where did you get your list of people to invite? A. Well, we invited some of my father's business acquaintances, some of my partner's acquaintances and some of his father's friends.

Q. What entertainment did you offer at first? A. We had a singer by the name of, I believe it was Edward Jones, very versatile singer,

inexpensive and we opened up with him and there was a combo, I believe he got some musicians to back him up, so to speak, while he sang.

Q. What type of entertainment -- how would you classify it? A. It was a variety of entertainment. He sang a little of everything.

Q. Did the entertainment which you had in this establishment at first, appeal to the 18 to 25 crowd? A. No, I wouldn't think so. If I wanted to appeal to them I would have opened up with something that would have been a much stronger drawing card than that group.

204 Q. When you first opened up, did you charge any admission? A. No, we did not.

Q. As you went along, Mr. Carter, what happened with respect to your business? A. Well, the private parties were very good.

Q. That was the free party? A. Yes. After that it completely died, so to speak. The during the day business was very small and the night business was very small and it was very difficult to meet expenses.

Q. Could you pay your rent? A. Well, at times there we really had to scrape. Had it continued I doubt if we could have.

Q. How much money did you have in the bank at one period, at your little period during this point? A. \$164.50.

Q. Did you have to throw away food? A. Large numbers of steak and pounds of hamburger was disposed of.

Q. As a result of the situation in which you found yourselves, what, if anything, did you decide to do? A. Well, we decided to put in a different form of entertainment in that it would appeal to a broader base of

205 people, a larger segment of people.

Q. Did you attempt to bring in bands which would appeal to younger people? A. No, we brought in bands that would bring in the older people primarily.

Q. Older people? Well, I thought you had the band which would appeal to older people. A. Well, these were more or less just local bands with no real strong appeal.

Q. I see. So what you went -- was into an area where better known bands would come in, is that correct? A. Well, we felt the better known names would help us quite a bit.

Q. Did you vary these bands so that you would appeal, as you put it, to a larger segment of the community? A. Yes, we did. We varied our entertainment. We felt that it was bad to keep any one band there any length of time and we just kind of chopped up the form and the time that they stayed there.

Q. Did you also bring entertainment which would appeal to the younger people? A. Occasionally, we brought in bands that would appeal to the younger people because these bands are very commercial and in today's current trends.

206 Q. Now around when was it that you made this change in your operation and broadened the base of your operation? A. Oh, I would say 60 to 90 days after we opened.

Q. Mr. Carter, would you define this change as a complete reversal of your policy or would you say you simply elaborated upon the policy which you had in this restaurant. A. Well, no. We kept entertainment there, we just varied it.

* * * * *

Q. Now, with respect to the conduct of your business. What do you do at the door to check people coming in who are under age? A. Well, we always have one gentleman standing right by the door and four days a week, we have two and I spend a good part of my time around the front door.

Q. What do those checkers do? A. Well, their job is to check I.D. cards, primarily, make sure that everyone is dressed properly.

* * * * *

209 Q. How do you define rock and roll music that we've heard so much about? A. Well, rock and roll would be a rock and roll sound, would be jazz orientated sound with a repetitious strong heavy beat with repetition in the lyrics. The lyrics would be repetitious.

Q. Have you featured rock and roll music in your restaurant? A. No, sir.

210 Q. What type of music have you featured? A. Well, we feature
rhythm and blues, we've featured pure blues, we've featured folk, swing.

* * * * *

215 Q. Now, let's get to a little bit different organization like the
British Walkers. A. Yes, sir.

Q. Do the British Walkers appeal to the younger people, the so-
called teenagers? A. Most people like to look at the British Walkers.
They are very commercial now. They are in the current trend, so to
speak, and they will appeal to the 18, 19, 20, 21 year olds, I would think.

Q. When you say the, "current trend", you're talking about the
Beatles with the long hair? A. Yes, sir. The folk-protest, so to speak.

* * * * *

216 Q. But you would say they appeal more to the younger group 18 to
25 than to an older group? A. Yes, sir, I would.

* * * * *

217 Q. * * * Mr. Carter, would you describe the amplification system
which you had in your restaurant before July, 1965? A. Well, we had a
Harmon-Kardon Amplifier, two astatic microphones approximately 12 to
14 Jensen Speakers.

Q. When you say a Jensen Speaker, what do you mean by that?
A. It's just the brand name of the speaker. It's a ceiling speaker.

Q. It's up in the ceiling? A. Yes, sir.

Q. How many of those speakers did you have? A. Approximately
12, 14.

* * * * *

219 Q. Now, did you soundproof the ceiling? A. Well, the ceiling orig-
inally is an Armstrong Acoustical Ceiling and it is soundproof.

* * * * *

229 Q. Did I urge you to get some evidence to me today of your entering
230 into this agreement for off-street parking? A. Yes, you did. You told me
you would like to see something official.

Q. What is the size of the lot? How many cars will it accommodate?

A. I imagine I've seen the lot three or four times myself. I would say that you could get 100 cars on there.

* * * * *

Q. Mr. Carter, I show you a letter which has been identified as Applicant's Number 10 and ask you if this is a letter which you procured just this afternoon? A. Yes, this is the letter.

Q. What does that letter say? A. Well,

"This will confirm arrangements which you have made with me to provide off-street parking on my property from 6 p.m. to 2 a.m. for up to 100 cars of your Roundtable customers. This arrangement is to be effective February 1, 1966, and is to run from month to month."

231 Q. Now, is month to month the best you can get on this? A. Right, because he said that at this time he just did not know what he was going to do with the property and that he would let us use it.

Q. Now, what are your intentions with respect to this parking? Are you going to make any charge for Roundtable customers? A. Well, no. We don't intend to make any charge, free parking.

Q. So that you will have a parking lot from February 1 for 100 cars for your Roundtable customers? A. Yes.

* * * * *

237

CROSS EXAMINATION

BY MR. DUNCAN:

* * * * *

Q. Do you recall what band you had at the time you started operation? A. Like I said before it was a singer by the name of Jones. His
238 name was Edward Jones, I believe. He went out and got some musicians to back him up and I believe we let them go shortly afterwards. They were very poor.

Q. Do you recall whether you had a band led by a Mr. Sandusky playing at the time? A. No, they did not open with us.

Q. Did they play shortly after your opening with you? A. Right off hand I couldn't say, however, that group did appear, I believe for two or three days.

Q. I see. Now, the Walkers, how many times have they been to the Roundtable? How many different times? A. Since we opened?

Q. Yes. A. I would venture to say possibly five times.

Q. I see. Can you tell me whether they appeared during the months of January, February and March 1965? A. I couldn't tell you right off hand, no.

Q. Do you know whether they appeared during the month of December in 1965? A. No, I couldn't.

MR. BINDEMAN: December 1965?

239

MR. DUNCAN: 1965.

THE WITNESS: Oh yes, wait a minute. They did play. Last week they finished what I believe was a two or three week engagement and that's the first time they've been there in some time.

BY MR. DUNCAN:

Q. Were they there during December 1964? A. I really wouldn't know.

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MR. DUNCAN: Madam Chairman, I subpoenaed from the President of the Corporation records of the corporation with respect to payments of bands and to the American Federation of Music Fund for the first four months of its operation, November 1 through March 31, 1965. I wonder if Counsel can make those available to me.

MR. BINDEMAN: We do not have those records, Mr. Duncan, therefore I cannot make them available to you. You may inquire of this witness. He told me he did not have them.

BY MR. DUNCAN:

Q. Do you have records, Mr. Carter, as to payments to musicians? A. Well, you see, when you make a payment to a musician you never make it to him because you make it to the agent and when you make it to the agent

it's rare that one agent would have one group. Like the particular agent who handles the British Walkers, I believe at one time he handled 32 groups. The particular agent that handles the Flamingos, I would venture to say he might have as many as 70 groups. So, when we do pay these traveling musicians they prefer their money in cash whereas when they leave and there's any discrepancy on funds for the check, they don't have to come back because these people do travel and when we do pay this group we merely pay them and get a signed receipt which we have no reason for keeping.

Q. Don't you enter the expenditure in your books? A. We do have a check book. Occasionally when it's a local group we do pay them in check
241 and instruct them to go to the bank and cash the check, however, it would be almost impossible for me to go through my check book and pick up stubs.

Q. It is your testimony, you have no records showing amounts paid to musicians or for musicians' services? A. I can tell you these amounts, but I don't have any documents.

Q. All right. Would you tell me who the musicians were who played at your establishment during the month of December 1964? A. Well, I would venture to say it would be this Edward Jones and his combo, which we more or less paid him and he disbursed it to the members. This was done by cash. I believe that was the period when the group under the leadership of Sandusky also played there. This was also paid in cash and to the best of my knowledge right now that's the only two groups I can remember playing there although neither one of those groups played primarily the whole month. There is some time I can't account for.

MR. TYSON: Do I understand, Mr. Bindeman, that this gentleman does not have any record of expenses in connection with an operation of this kind?

242 MR. BINDEMAN: The subpoena asks for records of the corporation as to any payments made by musicians, payments made to musicians, excuse me, and the American Federation of Musicians Fund. Mr. Carter

advises me that these are paid by check and by cash. Now, I suppose you keep some record of the cash?

THE WITNESS: Right. Well, it is more or less an entry in the book, band, \$400, \$500, \$600, \$700, \$800 and it's checked. This is the system we have. The words "band", denotes where the money went.

BY MR. DUNCAN:

Q. Is the band identified in your records? A. No, it is not. There is no reason for it to be.

* * * * *

243 Q. With respect to Mr. Jones' local group. Is this a group that uses an electrified guitar? A. I believe two of them were and one -- it was a long time ago and the group was very poor. I really don't remember exactly what they used or even who was there, other than Mr. Jones.

Q. Mr. Sandusky's group, I understand is presently playing at the Crazy Horse. His group used electric guitars? A. Yes, they do.

* * * * *

245 Q. Mr. Carter, I'll show you Exhibits 8 and 9 which were pictures you previously identified. When were these pictures taken? A. To the best of my knowledge they were taken recently.

Q. They were taken recently? A. Yes.

Q. Are these the tables that you've had in the establishment since you've opened? A. Yes.

* * * * *

246 Q. How big are these tables?

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Q. The tables shown in the pictures 8 and 9, Exhibits 8 and 9. A. I would say approximately 20 by 20.

* * * * *

250 Q. Mr. Carter, who are your meat suppliers? A. Well, we have various suppliers.

Q. Who supplies you steaks and hamburger? A. Well, we have Murray's, we have Washington Beef and the majority of the time my partner and

my father go to the Giant because they feel they can buy it as cheap there as we can buy it from Washington Beef and I know it's better quality.

* * * * *

253 MR. BINDEMAN: If the Board please, what Mr. Duncan has now said is entirely different from the question which he was pursuing. Mr. Duncan has made a continual point of certain representations made at a hearing in 1964. The record speaks for itself. We've tried to explain this. Mr. Duncan has gone to the extreme in his papers of calling this perjury on behalf of my client. I think that those charges are completely unfounded, they are ridiculous, they're terrible. They're not in keeping with his actions as I've seen today and I have the highest respect for Mr. Duncan.

* * * * *

255 [BY MR. DUNCAN:]

Q. Do you have roast beef on your menu? A. No, I said we have eliminated roast beef.

* * * * *

Q. I'd like to refer you to Exhibit 7, your lease, that's been identified here. I note that the first, the witness clause refers to the date of the lease as the 4th day of July 1964 and makes the effective date of the lease the 4th day of July, 1964. That date is contingent upon the lessor who is Mr. Cauffman, I believe, according to the lease, purchasing the property. A. Uh huh.

256 Q. Do you know whether the Board, this Board had issued a decision prior to that date, Findings of Fact and Conclusions? A. Where as Mr. Cauffman had bought the building before they issued the license?

Q. Yes. A. That I don't know.

Q. Do you know whether the Board had issued a decision prior to the 4th day of July, 1964? A. They had not.

Q. That's your recollection? A. Yes, to the best of my knowledge.

MR. DUNCAN: I'd like Counsel to note the date on the Board's findings and I believe the Board's records will indicate that its findings of facts and conclusions were dated June 1, 1964.

BY MR. DUNCAN:

Q. Referring to the lease again, Exhibit 7, I'd like to refer you to the fourth line of the witnesseth clause, which says the premises are to be used for the purposes of conducting a restaurant business, night club, public hall or other related business. Now, at the time you entered into that lease, did you contemplate that you would conduct a public hall at that location? A. No, we did not, however, if these matters are explored before you sign anything and in a lease whether you're going to use the property for something or not, if you get the o.k., you avoid conflict later on, whereas if I was in this piece of property and I had on there that I wanted to use it for an airplane hangar at such and such a rent and I came back later and said I wanted to use it as a restaurant, I'm at his mercy as far as rent goes. We start at the beginning again. I put everything in that lease that I thought of.

Q. What did you tell Mr. Cauffman that you contemplated using the place for? A. I told Mr. Cauffman I intended on using his building for a restaurant with entertainment at night.

Q. Did you tell him you contemplated using it for a night club?
A. When you say, "night club", what do you mean?

Q. Well, you used the phrase in the lease there. A. Well, that phrase meant entertainment at night. There would be entertainment used there.

Q. Now, you just testified that you did not contemplate, at that time, having this a public hall. When did you decide to use this as a public hall?

MR. BINDEMAN: Excuse me, Mr. Duncan. When you say, "public hall", I'm not sure what you mean. You may know that the District of Columbia requires a public hall license if you're going to have dancing, is that not correct?

MR. TYSON: If you're going to charge.

MR. BINDEMAN: If you're going to charge admission. Is that what you're referring to?

MR. DUNCAN: Yes. That is what I'm referring to. I assume Mr. Carter is an officer of this Corporation and he knew what a public hall is.

MR. BINDEMAN: Well, I don't.

MR. DUNCAN: That was the way in which I was using the phrase, "public hall", a public hall to be used for dancing under the police regulations.

MR. BINDEMAN: Very good.

BY MR. DUNCAN:

Q. At what time did you decide you were going to do that? A. The best of my knowledge, we came to this decision 60 to 90 days after we opened when business was so bad.

MR. DUNCAN: I have here a certified copy of the public hall application of Carber, Inc. I'd like to have marked.

* * * * *

259

BY MR. DUNCAN:

Q. Showing you Protestant's Exhibit 1, which is a certified copy of the application for certificate of occupancy, commercial, for a restaurant and public hall seating 260 persons of Carber, Inc., executed by Mr. Berman, I believe, do you recall filing that? A. Well, I remember taking it out because I had to go downstairs.

Q. What's the date of the application? A. The date? December 15, 1964.

Q. How long was that after you opened? A. We opened November 22.

Q. I see. So that's -- A. Does it say on there when this was issued?

Q. Yes it does. In the upper right hand corner of the front page.

A. January 25.

Q. No, I believe December 29. A. Uh huh.

Q. So, approximately three weeks after you opened for business you had decided that you wish to apply for public hall, not 60 or 90 days. A. Well, I said I'm thinking back.

260

Q. When did you commence to charge an admission fee at the door? A. Well, I imagine when the public hall license was issued. It's very hard for me to remember.

* * * * *

Q. Are you clear that you did not charge at the door prior to that time, prior to the end of December? A. That's right.

Q. Did you expect middle-aged clientele to pay an admission fee to eat roast beef and steak? A. Well, this admission charge only was put on at night and the cost of the entertainment we were providing warranted such.

* * * * *

261 Q. What was the amount of the admission fee? A. I believe it was 25 cents.

Q. Who collected the fee at the door? A. Well, at various times we had a hat check girl there collecting or the doorman collects.

Q. Was this the person who checks the ages at the door, also collects the fee? A. Well, sometimes there's two people up there. Sometimes hat check girl and two door men or a hat check girl and one door man.

Q. Has the fee increased from 25 cents? A. Yes, it has.

Q. What is the fee, in amount, during the summer? A. This past summer.

Q. During the summer of 1965. A. Well, it was 50 cents during the week, and \$1.00 on week ends.

* * * * *

262 Q. When did the amount go from 25 cents to 50 cents and \$1.00? A. It's very hard to say. I can't really remember, however, it was 25 cents during the week and either 50 cents or 75 cents on weekends. I don't really remember.

Q. When did you first put a person on the door to check the ages of the people coming in? A. The first day we opened.

* * * * *

267 Q. Now, what toilet facilities do you have in the establishment? A. Well, we have a mens room and a ladies room.

Q. How many units in each one? A. Units?

Q. Well, do you have one bowl in the ladies room? A. Well, in the ladies room we have a sink and one bowl.

Q. And in the mens room, what units do you have? A. We have a bowl, a urinal and a sink.

Q. Were these the toilet facilities that were contained in the drapery shop when you took over the establishment? A. Yes, they were the same ones that were there then, however, we tiled them and installed larger and better fixtures.

Q. But you didn't increase the number of units? A. No, we did not.

268 Q. How many people do you sit, accommodate? A. Well, it varies. Somewhere in the neighborhood of 220.

Q. I believe your public hall license indicates 260? A. Well, that's the maximum, however it's not that much room and we feel service the question of aisle space and service is very important and that's all we can seat is 220 people.

* * * * *

269 Q. When did you order the tables that were shown in Applicant's Exhibits 8 and 9? A. Well, those tables were ordered prior to opening.

Q. Those were your initial tables? A. Yes.

* * * * *

271 WEDNESDAY, JANUARY 26, 1966

* * * * *

273 FURTHER CROSS EXAMINATION

BY MR. DUNCAN:

Q. Mr. Carter, did the front arrangement to your establishment, the arrangement of the two front doors, was that the same arrangement that you opened up with? A. Yes, it was.

274 Q. Was that the arrangement that was planned by your architect?
A. Yes.

* * * * *

Q. Now, I'd like to refer you to Applicant's Exhibit Number 8. Is this a picture of your establishment looking toward the front door? A. Yes.

Q. Could you describe for the Board where the entrance door is in that picture? It's to the left, is it not? A. Well, you can come in either side.

Q. There is a door on either side? A. Yes, there is.

Q. Is the door on the right hand side as you're looking at this picture or the left hand side looking at it from the street, a door which opens from the outside? A. You mean the door to the left?

275 Q. No, the door to the right, sir, or the door on this side (indicating). A. Yes, you can open that door from the outside.

Q. You can open that door from the outside? A. Yes, you can.

Q. Is it being used as an entrance into the establishment? A. Well, it's used as both.

* * * * *

279 Q. Now, yesterday you testified with respect to a change in your operation which took place sometime after you commenced operation, is that correct? A. Yes.

Q. You stated that this was approximately how long after you commenced operation? A. 60 to 90 days after we opened.

Q. What was that change? A. Well, we varied our entertainment to appeal to a broader base of people, wider segment of people.

Q. Now, let's get specific on that. What type of entertainment did you put in that would appeal to these broader bases of people? A. All kinds.

Q. Did you put in rock and roll bands? A. No, we did not.

Q. Did you have rock and roll bands? A. (Witness nodded in the negative).

Q. Did you have the Chartbusters play? A. We had the Chartbusters for three days.

* * * * *

280 Q. How long did the British Walkers play at your establishment?

A. Some of that was on contract, some wasn't. It's very hard to say over a course of a year and a half just how long they did play there.

Q. How long did the contracts, I mean from your files and records and the contracts that you reviewed, how long did the Walkers play there?

A. Well, the British Walkers is such, I really can't pin point how long

they did play there. On two occasions we fired them and then we hired them back.

Q. You said the Chartbusters only played there for three days?

A. Right.

* * * * *

281 Q. Did you advertise your bands at all in publications, around the radio? A. Well, Mr. Tate handles most of that. I handle some of that myself. Most of it we left up to the particular parties we were advertising.

Q. Do you recall whether you advertised any bands on radio station WEAM, the lively one, as it's known here in December 1964? A. It's very possible we did.

Q. Do you recall whether you had six 30 second spots on December 3 and December 4, 1964? A. It's very possible we did.

282 Q. You keep receipts with respect to your advertising expense?

A. Yes, we do.

Q. Did you advertise in those radio spots that there was a rock and roll band at the Roundtable? A. Well, usually you call up and you pick the time and they more or less make the ad for you. They make up a tape and they go ahead and run it. If you don't like it you call up and they make up another one. You usually leave it to them.

Q. Mr. Carter, did you advertise that there was a rock and roll band at the Roundtable? A. I don't remember the ad right off hand.

Q. Did you keep records with respect to those ads of the text of the ad? A. No, you get a receipt as to the time. That's all, and the amount.

Q. Have you advertised since then on radio station WEAM? A. I believe we have, very limited, we don't advertise too frequently.

Q. What other radio stations have you advertised on? A. I believe we advertised on WPGC, a couple of times. That's about it, WEAM and WPGC.

* * * * *

283 Q. How many tables do you have in your establishment? A. I don't know off hand.

Q. How many people can you seat at each table? A. Well, usually you put a group of people at a table or pull the tables together, put a table cloth over them. There's many different types of sitting a number of people at a particular table.

Q. Well, let me show you Applicant's Exhibit 8 which shows primarily the small square tables and ask you if you can recall approximately how many of those tables you have? A. Well, this is the table I'm speaking of. Right off hand I don't know how many are in there.

Q. Can you give me any approximation on that? A. 75.

284 Q. Would your records show how many you purchased? A. Well, I imagine we could come up with that figure.

Q. Now, when did you order these particular tables? A. Well, we ordered them commencing construction. The exact date I don't remember.

Q. Yesterday, I believe you testified that although the maximum occupancy of your premises was 260 persons, you felt it was crowded when there was 220 people there? A. Well, not necessarily crowded. I felt it was a lot better for service with 220. It's not crowded with 220.

* * * * *

285 Q. Who did you contact to get your chef? A. The chef, when we first opened up, my partner did the cooking. We have various -- we contact the U.S. Employment Agency, we've had various chefs, very undependable.

Q. Mr. Berman did the cooking? A. Yes.

Q. Mr. Berman had experience with restaurants? A. Yes, he has.

Q. What experience was that? A. He's worked in quite a few different ones. I don't exactly know. He does quite a bit of food preparation in his own home.

Q. He had worked at restaurants as a chef? A. I don't know exactly in the capacity of a chef, but he cooked very well, however, we have a cook now.

Q. When did you hire the cook? A. We've had at least four or five of them.

Q. Do you have an automatic dishwasher? A. No, we do not.

* * * *

291 Q. Now, you referred earlier to advertising on WPGC, I believe,
292 radio station, WPGC? A. Uh huh.

Q. Isn't it a fact that that station appeals primarily to teen-agers?

A. Well, I believe it is the second largest listening audience in the city. Exactly who it is or what it is, I don't know. We also advertised on WAVA, which is a total news station.

Q. Do you recall, Mr. Carter, whether you ordered a group of spots to begin November 26, 1964, and to end December 31, 1964 on WPGC?

A. Well, it is very possible we did.

Q. Did you or didn't you? A. Well, I don't remember.

* * * *

305 Q. That doesn't answer my question, Mr. Carter. What type of agreement do you have with respect to the \$100 a month for the parking?

A. A verbal agreement.

Q. A verbal agreement with who? A. With the owner of the property.

Q. With the owners and this is Auben, I believe, A-U-B-E-N?

A. (Witness nodded in the affirmative).

Q. Why did you mention \$150, if you had an agreement at \$100, yesterday? A. Because at the time yesterday I was not aware of all the facts. We were discussing this up until yesterday of what should be the rent.

Q. You mean last evening when you were on the stand here and you testified \$100 to \$150? A. Up until that time that was what we had discussed, \$100 to \$150.

Q. After that time you have since fixed this on the sum of \$100?

A. Well, I talked to the real estate broker who handled it and it was \$100.

Q. That was after your testimony last night? A. Yes. No, I didn't
306 speak to him then, afterwards I spoke to him on the phone while I was here.

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311 Q. Have there ever been any altercations or fights within your establishment? A. Fights within?

Q. Within. A. Yes, I believe we did have two.

Q. So when you testified that there weren't any disorder within your establishment, you weren't quite correct, were you? A. Well, I say they weren't exactly fights they were more or less little arguments. They weren't exactly what you call fist fights.

Q. Was there a knifing in front of your establishment? A. No, there was not.

312 Q. Were you or your partner injured in a fight in front of your establishment? A. No, we were not.

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320 GEORGE BERMAN

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DIRECT EXAMINATION

BY MR. BINDEMAN:

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321 Q. Now, Mr. Berman, you heard Counsel for the protestants raise some questions about the public hall license which your Corporation obtained, would you tell me when it was that you applied for the public hall license the first time? A. I believe at the request of our attorney.

Q. No, that wasn't my question. My question is when, when did you apply first? A. I believe it was in December originally.

Q. 1964? A. 1964.

* * * *

Q. At whose advice did you ask for a public hall license at that time? A. Who advised us we needed one?

Q. That's right. A. Our attorney.

Q. And what was it that you were going to do that led you to consult with your lawyer about what to do? A. Well, New Year's Eve was coming up and he said if we were going to charge a cover charge like everyone else was doing, or admission, that we would have to have that.

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Q. There were some questions asked of Mr. Carter as to when your operation was changed, do you agree that your operation has ever been changed? A. No, it's never really been changed, no.

323 Q. What has happened to your operation? A. The only change we made, we didn't make any changes as far as our quality of food or anything like that goes, the only change we made is varying our entertainment a little bit to keep people in the restaurant after 9:00 o'clock instead of having an empty house.

Q. When you started out, what were your intentions with respect to this restaurant? A. Well, would you rephrase that?

Q. What kind of a restaurant did you hope to operate and what age group did you intend to appeal to? A. Middle-aged would be our age group that we were aiming for because of the spending power there and specializing in American food, roast beef and steak, primarily.

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CROSS EXAMINATION

BY MR. DUNCAN:

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335 Q. But you actually collect a fee from the person who comes in the front door, is that correct? A. At this time we do, yes.

336 Q. When did you start doing that? A. Probably when we got the public hall license. I know that New Year's Eve, I think we did. In fact I'm sure we did.

Q. Your testimony is that since the beginning of 1965 you've been charging an admission charge? A. If we had a public hall license at that time. If we didn't have the public hall license, we couldn't charge it. So, I have to find out when we had the public hall license. That's why we wanted it.

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338 Q. Have you ever worked as a chef or a chief cook in a restaurant before? A. No -- Yes, in my restaurant.

* * * * *

Q. Did you ever actually have a chief cook aside from yourself?

A. I'm the chief cook.

Q. You are the chief cook? A. That's right, I am.

* * * *

348 MR. DUNCAN: If the Board please, I'd like to offer for inclusion in this record a copy of the transcript of the proceedings of the protest hearing before the Board on May 20, 1964 concerning this applicant.

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351 [BY MR. DUNCAN:]

Q. I refer you to page 6 of the transcript and the question, the two questions starting half way down the page. "Well, what type of clientele do you expect to . . ." A. "Q. Well, what type of trade are you seeking to get into this proposed restaurant?"

Q. Do you remember that testimony? A. I believe so, yes.

Q. Now, would you read the next question and answer please? Would you speak up for the reporter please. A. You want me to read the question and answer?

Q. The question and the answer. A. The question is, "I'm going to ask you now a direct question. Do you intend to use this place as a rock and roll place?" The answer is, "No, we do not."

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352 Q. Mr. Berman, isn't it a fact that your restaurant opened up with a rock and roll band? A. No.

Q. Is it your testimony that you did not have a rock and roll band in the first week of November? A. As I remember, we tried to book in for opening a jazz-type, rhythm and blues group, not a rock and roll group.

Q. Did they have electrified guitars to your recollection? A. I don't remember -- a jazz group, most of them have guitars.

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354 Q. Mr. Berman, I show you pages 22 and 23 of the transcript, which is now Protestant's Exhibit Number 3 and in particular draw your attention
355 to the question presented to Mr. Shankman, your attorney in that hearing,

at the bottom of Page 22. Did you authorize Mr. Shankman, as your Counsel, to make the representation that he made there? A. Would you show me?

Q. Yes, of course. There's the question presented -- "Could we hear . . ."

THE CHAIRMAN: What page is that?

MR. DUNCAN: Page 22 and 23 of the transcript.

The question is, "Could we hear that there will not be a rock and roll club there?" And Mr. Shankman states, "We'd be delighted to state that." Did you authorize your Counsel to make that representation to the Board?

THE WITNESS: Well, I think so, yes. Would you now -- the question was we are not going to have a rock and roll place. I just answered that.

BY MR. DUNCAN:

Q. The question is as stated there, did you authorize your Counsel to make the representation to the Board? A. I think the answer is, yes, I did.

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359 Q. Now, do you recall an incident involving a knifing in front of your establishment in February 1965? A. No indeed I do not.

Q. You don't recall such an incident? A. No, I don't.

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386 MR. BINDEMAN: Thank you. That concludes the applicant's case.

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387 GARDNER E. PALMER

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DIRECT EXAMINATION

BY MR. ZIMMER:

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THE WITNESS: Gardner E. Palmer. I live at 1219 29th Street, Northwest.

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Q. Now, approximately how far is that from the Roundtable?

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388 Q. Now, you designated your house as point "e". You live around the corner from the Roundtable? A. That's correct.

* * * *

389 Q. How long have you lived in this neighborhood? A. Nine years.

* * * *

390 Q. What was the neighborhood like during early 1964? A. The neighborhood was relatively quiet neighborhood. There is some traffic noise perhaps, but other than that it would be considered to be a quiet, residential neighborhood.

Q. Is that one of the virtues of the neighborhood in your mind?

A. Yes, that and its convenience.

* * * *

Q. Directing your attention to the period before the Roundtable opened in 1964, what has been your experience during the night after you had gone to sleep? A. I had had no particular difficulty with noises. I'm a sound sleeper and I was not awakened except on perhaps rare occasions with fire engines and the like.

Q. Directing your attention to January 1965 and the period after the Roundtable opened, would you answer that question I just put to you, for the Board? A. After the Roundtable began functioning with a substantial

391 patronage, which I would estimate in February or March 1965, I would estimate that I was awakened during the night, at least on an average of once a week, sometimes more, sometimes less, usually at around 2:00 o'clock in the morning.

Q. How did you know it was about 2:00 o'clock in the morning?

A. Because I looked at my watch. I'd open my window to see what was going on outside.

Q. What was going on outside? A. Kids in cars going up into and around that private alley adjacent to my property and making noises and, not as far as I could tell, not comporting themselves well.

Q. This is at 2:00 o'clock, you say in the morning, is that the same time the Roundtable closes? A. This is approximately, I say, 2:00 o'clock. It could be a little earlier, it could be a little later than 2:00 o'clock.

Q. Are there any other places within two or three blocks that attract teenagers, that close at that hour? A. Not to my knowledge.

Q. Would you describe -- can you describe any noise emanating from the restaurant, itself? A. In the -- my bedroom is on the front of the
392 house. In the summertime in our garden we are conscious of the noise emanating from the building to the point where it disturbs the use of my garden where we often dine and entertain.

Q. Since the beginning of 1965, have you noticed any increase in parking problems? A. The parking was difficult and has now become, I would say, intolerable. I hesitate to go out on a Friday or Saturday night, because when I come home, I have a very high percentage chance of finding a car, usually with a Virginia or Maryland license and locked, parked directly in front of my driveway and precluding me from using my garage on Olive Street.

Q. You do have a garage? A. Yes, on the north side of Olive Street between 28th and 29th.

Q. Your testimony is that when you go out on Friday night you're frequently precluded from going into your garage because there's a car parked outside in front of it? A. Or, getting my car out from my garage. I have called the police, I think, I have not kept an accurate record, but, I would think at least 15 times during the year to have something done so I can get into my garage.

393 Q. Have you noticed any acts of vandalism in this area during the past year or since the beginning of 1965? A. Well, if throwing beer cans against your front door when you're entertaining is vandalism, that occurred at my home when I was entertaining guests for dinner in early December of this year.

Q. Have there been any other acts which you find to be disagreeable or is there any trash around the area? A. Well, I find that Georgetown

has become festooned with empty beer cans around our neighborhood which was not the case prior to the time the Roundtable started.

Q. Have you noticed -- have you ever been disturbed by car noises?

A. Yes, I have. Many times these young people start up their cars like they were in a drag race. They race their motors and screech their wheels, again late hours, early morning hours, late in the evening.

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CAPTAIN DAN B. KENNEDY

* * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

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Q. Captain Kennedy, how long have you been with the Metropolitan Police Department? A. 34 years.

Q. How long have you been Captain of the 7th Precinct? A. About 11 years.

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Q. Now, Captain Kennedy, are you familiar with the Roundtable Restaurant? A. Yes, I'm fairly familiar with it.

Q. Have you been in the establishment? A. I have.

Q. How many times? A. I'd say three or four times in the past year.

Q. Do you feel that this establishment contributes to your police problems in the area we have described here between 31st and 27th by attracting a young clientele into this area? A. Yes, I think it contributes to our parking problem and also to our complaint problem there.

Q. Are you familiar with the arrest for a knifing which took place in front of this establishment in February I believe, 1965? A. Yes.

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Q. Have you familiarized yourself with respect to that incident? A. Yes, I'm familiar with it.

Q. Can you tell the Board what your records show on that? A. The records show that at shortly after 2:00 a.m. on February 20th, as the

Roundtable was being locked up for the night, a fight took place on the sidewalk in front of those premises and Mr. Carter, who is co-owner of the Roundtable, and Mr. Tate tried to break up the fight. One of the parties in the fight was a Negro man and he drew a knife and cut Mr. Carter on the ear, the left ear, and he cut Mr. Tate on the forehead and I think he suffered a puncture wound in the left side.

Q. Do you know whether he was a patron of the Roundtable? A. The investigation said that he was in the Roundtable before it closed.

Q. Are you familiar with any other arrests in the 2800 block of M Street? A. Yes, I'm familiar with some arrests in the front of 2813 M Street.

421 Q. Could you describe them to the Board? A. On the night of August 27th about 9:45 p.m. we had a call for an assault in the vicinity of 29th Street and Detective Libby responded to that call and upon his arrival, the Roundtable was putting some young fellows out of his restaurant because they had become disorderly in there and they became involved in a fight in there.

Q. Inside the restaurant or sort of in the door coming out, or how was this? A. It was inside the restaurant. They became disorderly, the management tried to put them out and I think they started to fight in there and by the time Libby got there, they were coming out and he arrested three for disorderly conduct. They were using profane language and were loud and boisterous and on the street.

Q. Do you know of any other incidents in this one block of 2800 M Street? A. Well, I know of an incident that happened on January 15th, shortly before midnight when a young man was put out of the Roundtable. I don't know exactly why. I guess because of his conduct and after he got outside, he became angry or frustrated and he stuck his fist through a
422 window there in a vacant store, I think the address is 2811 M Street.

Q. Any other incidents that you recall from your records? A. Yes. There was another incident on July 1st, about 12:45 a.m., a man walking on the sidewalk at 29th and M Street, was pushed to the ground and kicked.

He suffered a fractured nose by someone who he thought was unknown to him.

Q. Was the assailant arrested? A. An investigation was made and in the course of the investigation they inquired at the Roundtable, and the Roundtable said that they had put, I think, five young men out of the restaurant prior to that and through their help and cooperation we identified one young man, who fit the description and who apparently was the assailant, but the victim was reluctant to proceed with the case. He was reluctant to come down and view the person we suspected and he just lost interest in it.

Q. Now, you've described four incidents, a knifing in February, an assault in August, putting a fist through a store window in January, and another assault in July. Can you think of any other incidents based on your records? A. I can think of no specific instances. I know that

423 there's been arrests in the area, as that report shows, for disorderly conduct and intoxication and such.

* * * * *

Q. Do you recall having a discussion with Mr. Berman, during early 1964 with respect to the Roundtable? A. Yes, I do.

Q. What was the reason for this discussion? A. Well, we always discuss with the new applicant, what he proposes to do in his restaurant and so forth. On this occasion I spoke with Mr. Berman in the presence of my license officer, Private Gocke. We had information that he was going to have a rock and roll establishment there and during our discussion we asked him about it and he said that he was not going to have a rock and roll establishment. He said he was going to have a nice, moderately
424 priced restaurant, moderately priced food and he was going to cater to an adult group. We asked him about what entertainment he proposed having there and he didn't seem to be too sure. He said something -- he might have hi-fi or might have a piano player or something like that.

Q. You said he referred to a piano player? A. As I recall he did. He said possibly.

Q. Did you express any views to the Board in connection with the initial application of this license? A. Yes, I think I made a notation on his application that I had had information he was going to have a rock and roll establishment there and that I had spoken to him about it and he didn't either -- he denied that he was going to have a rock and roll establishment but he wasn't too certain about what kind of entertainment he would have and I said I would be opposed to a rock and roll establishment at this location.

Q. Did you express an objection to the Board with respect to this establishment if it was going to be a rock and roll establishment? A. Not in so many words. Of course, he said he wasn't going to have a rock and roll establishment and I had information that he was. Now, I said in the
425 report, as I recall, that I would object to a rock and roll establishment at this location.

Q. Captain Kennedy, do you have any recollection of this establishment opening in November, 1964? A. I know it opened in November, but I don't have any recollection of the day or the night that it opened.

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Q. Captain, what did you mean by rock and roll entertainment or a rock and roll band when you questioned Mr. Berman with Private Gocke, the license officer and expressed your views on this subject to him?

A. Well, my idea of a rock and roll band is one that plays loud and plays a rapid beat accompanied by dancers who dance as fast as the beat is played.

426 Q. Now, taking into account what your idea of a rock and roll band was, did you observe such a band in the Roundtable the first time you visited it? A. Yes, I think I did.

Q. Do you know whether the Roundtable had a rock and roll band, taking into account your idea of it, when it opened in late November 1964?

A. No, I don't know whether it did or not at that time.

Q. Do you recall when you first went in the establishment? A. It must have been in February or March of 1965.

Q. Did you receive any information from your people -- the members of the police under your supervision with respect to the type of entertainment going on in the Roundtable during this period prior to your visit there? A. Yes.

* * * * *

427 Q. Captain Kennedy, did you receive such information from the members of your staff? A. Yes. Detective D'Ambrosio told me that the opening night, that they had a band there.

Q. A rock and roll band? A. Rock and roll band, he described to me.

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CROSS EXAMINATION

BY MR. BINDEMAN:

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435 Q. In your experience, and particularly listening to your subordinates testify yesterday, would you say that the Roundtable, at all times, has tried its best to operate a good clean establishment in accordance with law? A. Yes, I think they have.

Q. Have you noticed particular cooperation with your precinct and with your department? A. Yes, especially with the Detectives and the men who were making these investigations. They've had excellent cooperation.

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436 Q. Now, you also said that Mr. Berman told you earlier, in 1964, that he would have a nice restaurant. Do you think this is a nice restaurant? A. Well, it was not the impression I got when he talked to me. Not the kind of restaurant that I thought he meant when he talked to me.

Q. What you thought he would have is more or less a restaurant which would not have any dancing at all and not have any entertainment at all? A. Well, I thought it would be a quiet restaurant that specialized in good meals, really.

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441 Q. Now, this is the comparison of the arrests made in the 2700 and
 2800 block of M Street Northwest, between 1964 and 1965. It shows a total
 of nine in 1964 and a total of twenty-two in 1965, an increase of 13 and
 that again is reflected in the increase in disorderly exactly as we had in
 at the larger area. Now, an increase of 13, Captain, is a little bit more
 442 than one a month over a period of a year. In your judgment, is that
 increase particularly significant? A. No, I would say not.

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456 Q. You have heard your staff and the other policemen testify that
 the Roundtable is operated in a lawful manner so that there is no violation
 of law inside the premises. Would you agree, sir, that if any patron vio-
 lates the law outside of the restaurant, that that becomes a police matter?
 A. Yes, it does. It's on public space.

Q. And that becomes a matter for the administration of law and or-
 der as administered by the Police Department? A. It does.

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459

REDIRECT EXAMINATION

BY MR. DUNCAN:

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Q. * * * In the light of these increases during 1965, primarily in
 disorderly conduct arrests do you feel that in the particular area that this
 increase was -- do you feel that this increase was attributable to the
 Roundtable?

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460 THE WITNESS: I've mentioned four cases of disorder where ar-
 rests occurred in the 2800 block of M Street and I would feel that the
 461 Roundtable did contribute to some of these arrests, not the Round-
 table, but the patrons from the Roundtable.

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463

CAROLYN M. ANDRADE

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DIRECT EXAMINATION

BY MR. DUNCAN:

* * * *

Q. Where do you live? A. 1241 28th Street Northwest.

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Q. How long have you lived there? A. 12 years.

Q. Do you rent or own the residence? A. I rent.

Q. What do you do, Miss Andrade? A. I'm Executive Secretary to Congressman Callan of Nebraska.

Q. How long have you been in this position? A. Well, I've been in this job one year and I've been on the Hill, 15.

Q. For what? A. Up on the Hill for 15 years.

Q. Now, would you describe an incident which took place in June, 1965, I believe? A. Yes, on June the 25th, Friday night, I had some guests for dinner and at 10:30 they were leaving and I was saying good night at the door when I noticed that directly in front of my window of my living room there was a car with a blond boy's head leaning up against the door and moving somewhat. Well, I didn't want to call my guests' attention to it and as I shut the door I went to the window and looked out to see what was happening and within a very few moments this boy straight-

466

ened up and started pushing his hair back and started rearranging his trousers and picked up this blond head, I had not seen up till then, and sort of threw it up against the door and then he threw something out of the window and then drove away.

Q. Did you observe the age of this person? A. I would say 19, 20 years old.

Q. Is this the first incident of this type you'd ever observed in this neighborhood? A. Yes, it is, sir.

Q. Now, prior to the advent of the Roundtable in November 1964, was this a quiet residential neighborhood? A. Yes, it was very dead

quiet, one could sleep easily, we didn't have the noise.

Q. Since the advent of the Roundtable have things changed? A. Yes, we have big crowds walking up and down the street making noise and playing radios and shouting under your window. As late as 10:30, 11:00 o'clock you're awoken several times a night by gangs piling into their cars and singing.

Q. Are these crowds usually a crowd of people - generally young?

467 A. Yes, they're all teen-agers. I've gotten up and looked out to see who they were.

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468 DOROTHY L. McGRADE

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DIRECT EXAMINATION

BY MR. DUNCAN:

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Q. Where do you live, Miss McGrade? A. 1217 29th Street.

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469 Q. Is it correct, that this is right around the corner up from M Street on 29th? A. Yes, it is the fourth house north.

Q. This is right around the corner from the Roundtable? A. Yes.

* * * * *

470 Q. How long have you lived at this residence at 1217 29th Street?
A. Five years.

Q. And you've owned it since then? A. Yes.

Q. Now, what was this neighborhood right by your house like, before the advent of the Roundtable during the year 1964? A. I'd say a strictly residential. You have the M Street traffic but that was the extent of it. The basic neighborhood was a residential character.

Q. Was it a quiet area? A. Yes.

Q. Do you object to the issuance of the license to the Roundtable?
A. Yes, I do.

Q. What's your primary reason for that objection? A. My primary

reason would be from the noise stand point of the past summer, having to
 471 put air conditioning in the front of the house and to try and ~~drown out~~ the
 boisterness on the street and my room is to the back of the house and
 when the air conditioning is running in the summer I do not hear the
 music, but in the fall and the winter even with storm windows I hear, not
 only the music from the back, but the street noises from the front.

Q. As I understand it then, your bedroom is in the back of the house
 and you have a garden which goes right down to the Roundtable? A. Yes,
 within a very close proximity to their back entrance.

Q. How far is that? A. I believe my garden is about 80 feet, so
 their back entrance, I would imagine, is around 100 feet.

Q. Do you notice anything about the music from the Roundtable?
 A. Well, you can constantly hear more particularly the heavy drum beat
 and then the last, on perhaps half an hour to 20 minutes what, I assume,
 is probably the closing set of music, it becomes louder, the pitch becomes
 a little bit deeper and the beat much heavier, and it is just a constant heavy
 sound up until the final closing. I presume, the last set of dancing is to get
 everybody on their way.

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474 Q. * ** Have you observed on occasion at or around closing hour
 youths walking up 29th Street? A. Yes.

Q. Are they quiet about it? A. Infrequently they are.

Q. Infrequently? A. Infrequently they are not quiet -- frequently
 they're noisy.

Q. Have you had any incidents in which people have rung your door
 bell or knocked on your door? A. Yes. During the past year we have
 had a number of incidents of people stopping or coming up our steps and
 hitting the doorbell.

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MARY E. McDONALD

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DIRECT EXAMINATION

BY MR. DUNCAN:

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Q. Where do you live? A. 2824 Olive Avenue.

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478 Q. How long have you lived at your address on Olive Avenue?

A. Since 1955, 11 years, approximately.

Q. In all that -- what? A. I own it.

* * * *

Q. Do you recall whether the neighborhood was a quiet neighborhood, 1963, 1964, around Olive Avenue? A. It was quiet.

Q. Has the neighborhood changed? A. Drastically.

* * * *

479 Q. Are you, Miss McDonald objecting to the issuance of a Class "C" Liquor License to the Roundtable? A. I am.

Q. Why are you objecting to that? A. Because of the class of people it brings into the neighborhood.

Q. Have you had any property damage or incidents of damage to your home? A. Yes, I have.

480 Q. Could you describe them to the Board, please? A. On two instances, one involves a fence. My house has a white picket fence abutting on the street, that was pushed in. It has two by four supports, I say that simply because it could not have been someone falling against the fence. It had to be someone pushing against the fence. I had a little --

Q. When did that happen?

* * * *

A. Approximately April of 1965.

Q. Spring. What was the other incident you were about to refer to?

A. I had a little white wrought-iron replica of my little black cocker which had stood on the stoop of my house for two years or more unmolested and it was stolen.

Q. When did that happen? A. Approximately the same period, April of 1965.

481 Q. Are you bothered with -- have you been bothered with any other incidents in this area? A. The same type of incidents that the other witnesses have enumerated, the noise on the street, my bedroom is on the second floor abutting on the street. I have picked up beer cans and whiskey bottles routinely when I've gone out 7:00 o'clock in the morning to walk my dog. I've seen this disorder at approximately 11:00 o'clock at night when I have again gone out to walk my dog.

Q. Has there been any damage to your automobile? A. Yes. My antenna was snapped.

Q. When was that? A. About a month following. That would be about May of 1965.

Q. Where was your car parked at that time? A. Immediately in front of my house.

* * * * *

484 Q. Miss McDonald, have you observed the people marching by at 11:00 o'clock at that hour of the evening? A. Yes, sir, I have. I've already said that I'm out quite frequently at 11:00 o'clock giving my dog a good night's walk.

Q. What age are these people predominantly? A. In their teens, mostly.

Q. Have you followed any down 28th Street? A. I haven't followed them down 28th Street but I've observed them cross at an angle from 28th Street to the opposite side of the street which would be the west side of the street.

Q. And go south on 28th Street? A. Go south at an angle.

Q. Have you observed them coming the other way? A. Yes, I have.

Q. Coming from, in other words, the corner of 28th and M? A. Yes, I have.

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486

MARGARET WALKER

* * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

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Q. Where do you live, Mrs. Walker? A. 2806 N.

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Q. How long have you lived at that residence? A. 25 years.

* * * *

Q. Would you describe an incident that took place in the last year to your automobile? A. Yes. I left my car on the corner of 28th and N, a little bit north --

Q. On 28th Street? A. On 28th Street and when I came -- I left it over night and when I came out in the morning and I think it was a week end, because my daughter was there and she works in New York and she was with me, this is about April. Three tires were down and I thought somebody had let the air out of the tires and then when I got hold of a man, we got into the garage, they had been cut.

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Q. Have you noticed a change in the neighborhood? A. Yes, very definitely, yes. Much noisier.

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492

THURSDAY, JANUARY 27, 1966

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494

LEIGH M. MILLER

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DIRECT EXAMINATION

BY MR. DUNCAN:

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Q. Where do you live, Mr. Miller? A. I live at 2710 Olive Avenue, Northwest, Washington, D.C.

Q. Do you rent that home? A. I rent the home.

Q. How long have you lived there? A. I've lived there for a little over two years. I first arrived in December, 1963. At that time I was looking for a small house with a couple of bedrooms in a quiet neighborhood. I am divorced and have two children and so I needed a place that

495 had some facilities, the park was close by, it was a quiet area and the house is a small house to the street, it's not set back in that area. When I arrived in December, '63, I found it was a good place for the children because it was of a quiet residential nature of the area. For the next year it continued this way. There are some parking problems during the day but during the evening it was a quiet area, not very many children or young people in this particular area and after dusk and dark it would be -- it was a quiet residential area. There was very little street traffic and very little pedestrian traffic after dusk. There was some, a normal amount for that area but perhaps not even as great.

Q. What was the parking problem? A. Parking --

Q. Like on the 2700 block of Olive Avenue before the advent of the Roundtable, say during 1964 up through November? A. For the year after I arrived there, the parking during the evening was very good. By the time I would come home from work and I'm with the Agency for International Development at the State Department, it would be easy to park by car and if I left for the evening or had to go out at all it would be easy coming back at any time during the night to park. There were a few people, a few transients who would park who were working at the Sealtest Dairy, I believe, which is across the M Street Bridge but those are rela-

496 tively few and it was very easy to park in the area.

Q. In the evening? A. In the evening, yes. During the day there are quite a group of people who apparently work at the dairy and in town, I would gather from looking at the kind of people who park and during the day it's quite difficult. I can only speak from casual observation there, not having seen it very often. But, during the evening it was very easy to park. This condition continued through most of 1964. Along about the Christmas season of 1964, suddenly the parking problem became really

difficult. I remember being very surprised because I didn't understand what had happened. Suddenly, from a very easy place to park it became very difficult and you'd have to drive around the block several times to find a parking place and I really couldn't understand this. In fact I remember thinking at the time that it's rather odd because most of these cars seem to be filled with young people, teen-agers, et cetera, and I can remember being surprised that there were so many parties in the area at the Christmas season because I really hadn't seen any teen-agers around. Most of the teen-agers looked as though they had been to the party or were coming from the party and I also remember thinking that the parties were lasting rather late for such a steady, continual number of teen-agers who, apparently, had been drinking some and they had a very party -- loud, boisterous kind of conduct you wouldn't expect to see.

Q. Does this condition with respect to the parking situation in the area being easy continue now? A. No. Since December, '64, a year ago, over a year ago the parking has remained extremely difficult, especially on Friday and Saturday nights. During the week it's not as bad. Usually you can find a place. Sometimes it's a few ways away from my house. On the weekends it becomes extremely difficult to find a place.

* * * * *

Q. What else have you observed in this area since December, 1964?

A. Well, aside from the parking problem, of course, became acute. The same time, as I indicated, one of the reasons I had come to this particular area was because it was not only handy to my work but it was in a quiet area and I have two children, now age four and seven. After Decem-

498 ber, '64, there have been frequent incidents of a good deal of noise. I've been awakened frequently at night, especially on Friday and Saturday nights, in fact, it has become quite easy for me to tell when it is 2:00 o'clock on Friday night and 12:00 o'clock on Saturday night because, in the Spring, Summer and Fall, I don't have an air conditioner in my house so I sleep on the street side with the windows open and along about 11:30

to 12, on Saturday night and perhaps 1:30, after one on Friday nights there's so much noise that I'm usually awakened. In fact, sometimes -- the children sleep in the back bedroom, they've even been awakened. Sometimes I've gotten up because the noise has gotten so bad, they've been shouting, abusive language, often filthy epithets coming out and so it's really been quite bad. It varies of course but on some nights it's quite bad. On other nights during the week, I suppose on half a dozen occasions I've run to the front door because I've heard screams from apparently a woman, rushed out in the street thinking that some woman was perhaps being assaulted or something and discover a group of teenagers who are -- I don't know what they were doing but at this time, I think it was 11, 12:00 at night and they were going from the 28th Street corner of Olive Avenue, which, from my house is the direction of the Roundtable. These would be teen-agers or young people. They would be moving down Olive Avenue along the street usually looking for their cars.

499 MR. TYSON: Screaming at the same time?

THE WITNESS: Yes, not always screaming but I'm trying to describe the mood of these particular people.

BY MR. DUNCAN:

Q. Mr. Miller, do you personally know of any vandalism on your property? A. Yes, there have been.

* * * * *

Q. The vandalism incident that you referred to that occurred in 1965, was in the evening? A. Was in the evening. In fact there were really two incidents. One really couldn't be called vandalism, I suppose. The wreath was stolen off my door on this last Christmas Eve, but the other incident was in the early part of the Fall, in September, I believe it was, in which my car --

MR. BINDEMAN: What year, sir?

THE WITNESS: 1965.

My car, which is parked out in front of my house, I parked fairly

500 early in the evening, around 6 or 7:00. When I went out to get in it about 10:00 o'clock that night, had been entered, it was not locked, had been entered and someone had taken the gearshift, I have a Volkswagen that has a gearshift on the floor, and they had taken the gearshift and apparently wrenched it in some fashion so that in fact the gearshift would not work. It was completely -- it would go into reverse and that's all. I couldn't go forward. It had been wrenched in a terrible hard fashion and the emergency brake had also been wrenched in a fashion that it wouldn't work either.

BY MR. DUNCAN:

Q. Now, have you ever followed or observed any of these youths going or coming from the Roundtable itself? A. I've never followed any of them but I have observed young people, teen-agers, a group that you can because of the character of the neighbor you can fairly easily identify as being a group that appears in that area and I have watched people of this group, just because I've been walking down 28th Street and along M Street and just because they've gotten out of the car, out of their cars in front of me and walked to the Roundtable going in the righthand door there as they arrive. So, I've seen them enter, young people, children, teen-agers, leave and enter the Roundtable and I've seen them walk around to 28th Street. I've never followed anyone from our block, which is the 2700 block of Olive, around to the Roundtable.

* * * * *

501 CROSS EXAMINATION

BY MR. BINDEMAN:

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503 Q. So what you're telling us really is that you've had two acts of vandalism and you don't know who did them, isn't that correct, yes or no? A. It is correct that I've had two acts of vandalism. These acts have occurred since December, '64, and nothing had happened before that time.

* * * * *

511

KERMIT S. MURPHY

* * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

* * * *

Q. Where do you live, sir? A. 1226 29th Street, Northwest.

Q. How long have you lived there? A. Since 1952.

* * * *

513

Q. Have any acts of vandalism been committed to your property within the last year? A. Yes, sir.

Q. What were they? A. Well, my aerial was broken off my car.

* * * *

514

THE WITNESS: It was September or October. I couldn't remember which.

MR. WYCKOFF: What year?

THE WITNESS: This year, '65.

* * * *

[BY MR. DUNCAN:]

Q. Mr. Murphy, I'd like to refer you again to Applicant's Exhibit Number 6 and you will note that there is a City Service Station on the hand -- the lefthand end of that block. Is that correct? A. That's right.

515

Q. Have you observed young people going to and thru, to and fro at closing hours in that service station? A. I have, on numerous occasions.

Q. Have they been orderly? A. I would say disorderly.

Q. You recall any incidents of your seeing urination that you've witnessed? A. I have.

Q. Where was that? A. Well, I live at 1226, I've seen it directly in front of my house from midnight, 2:00 o'clock in the morning, 3:00, three and four at a time.

Q. When was that? A. You mean the approximate month?

Q. The approximate time. A. I've seen it several times, all through the Summer and Fall of 1965, '64.

* * * *

518

NICHOLAS J. DIGIOVANNI

* * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

* * * *

Q. Where do you live, Mr. DiGiovanni? A. 2711 33rd Street, Southeast.

519

Q. Do you have a place of business in the 2800 block of M Street, Northwest? A. Yes.

Q. What is that? A. Giovanni's Restaurant, 2809 M Street, Northwest.

Q. How long have you been in that place of business? A. We purchased the building in April of 1963, no, '62. We opened our business in March of 1963.

* * * *

Q. How far are you from the Roundtable Restaurant? A. Two doors.

Q. Two doors to the east, is that correct? A. To the east from them, yes.

Q. Do you remember when the Roundtable opened? A. Yes.

Q. Did you go in the establishment at that time? A. Yes.

Q. What did you see opening night? A. Well, band, people, music, beer.

520

Q. What kind of band? A. Rock and roll.

* * * *

Q. Mr. DiGiovanni, what instruments did the band use? A. Drums, electric guitars.

Q. What type of beat was being played?

* * * *

THE WITNESS: Well, a very harsh rhythm like you hear on radio stations kids listen to, my kids, everybody's kids, I guess.

* * * *

BY MR. DUNCAN:

Q. Have you been in the establishment since then? A. Yes.

Q. What have you observed? What type of band have you observed?

A. What type of band?

Q. What type of band. A. Same type, rock and roll bands.

521 Q. What you consider a rock and roll band, that's your definition of the word, "rock and roll"? A. Yes.

Q. Have you observed a band playing a waltz? A. Yes.

Q. You have observed them playing a waltz? A. Oh the band?

Q. A waltz in the Roundtable? A. Oh, no, no, not in the Roundtable.

* * * *

522 Q. Do you recall whether the establishment charged an admission fee on the first night you were there? A. Yes.

Q. All right. Do you recall when that was, the date, please?

A. The day was, it was Friday, the day after Thanksgiving Day.

Q. 1964? A. Yes, 1964.

Q. Do you recall what the amount of the fee was on that night?

A. 25 cents.

* * * *

523 Q. Did they purchase coffee from you for use in the restaurant?

MR. TYSON: In great quantity.

THE WITNESS: I don't know what you mean by, "great quantity", but most, especially in the beginning and it continued, coffee was purchased by different people from the Roundtable and carried out in carry-out cups which they took into their establishment.

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540

TEDSON MEYERS

* * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

* * * *

Q. Where do you live? A. 1237 28th Street, Northwest, in Georgetown.

* * * *

541 Q. How long have you lived at that residence? A. Since November of 1961.

* * * *

Q. Mr. Meyers, have you been in the Roundtable Restaurant?

542 A. Yes.

Q. When was that - when was the first time you were in the place?

A. The first time I was in the Roundtable was during June or July of 1965. I was there just after closing time to have a talk with one of the owners.

Q. Would you describe the circumstances surrounding that?

A. Well, things had gotten awful in the neighborhood. It had changed. I had had some fairly unhappy incidents and I went to talk about it. It was not the first time I had talked about it but it was the first time I had actually sat down for a few minutes. He was there, that's Mr. Berman.

Q. Who did you talk to? A. I talked to Mr. Berman, but Mr. Carter was there briefly as well.

Q. What did Mr. Berman say to you? A. Well, at that time he said he wanted us to know how hard they were trying to keep a decent place, that they had enough trouble because of gamblers and pushers trying to do business with these kids and therefore they take every effort to keep them out of the place on the street instead where they belong.

* * * *

543 Q. Did you have an earlier conversation with Mr. Berman? A. Yes, I had several on the phone but I also had a conversation with him outside the place one evening.

Q. When was that? A. Probably in March, mid-March or early April. It's hard to spot because we -- I was in and out of town and we had some weather changes and I seem to remember it was an off-temperature night. We were both in light clothes but it was probably on a night when it should have been a little colder like early March and he remembered that I had spoken to him on the phone some time before.

MR. WYCKOFF: Who is, "he"?

THE WITNESS: I'm sorry, that's Mr. Berman and he said, he acknowledged at that time that he was running a rock and roll place.

BY MR. DUNCAN:

Q. Did he use that expression to you? A. He used that exact expression.

Q. Did he refer to a restaurant? A. Yes, he did.

Q. What did he say? A. Well, what he said, and I want to make
544 it clear I didn't solicit it, he just said so. What he said was, "Look, someday we want to run this place like a regular restaurant but right now we've just got to kind of make our money out of it because we've got a lot wrapped into it, so, we've got to run it as a rock and roll place."

* * * * *

Q. Have you had any -- let's move to another area and come back to this. Have you had any incidents of vandalism to your property?

A. Yes, I've had the antenna bent double on my car.

Q. Where was your car parked? A. On 28th Street, between Olive and M.

Q. When was that? A. I believe it was in late July or August of '65.

Q. Have there been any other incidents with respect to your property? A. Yes, there have and one especially that caused me a great deal of concern and prompted the conversation with Mr. Berman in his restaurant.

545 Q. Within his restaurant? A. The one inside. The one, I think I first referred to in response to your questioning just now.

That was the night of June 4, of 1965, at about 11:15, 11:30, somewhere in there. I was seated outside on my front stoop of the house. My wife was upstairs. The window was open. I knew she was quite tired and in bed, and a car pulled up. In it were three men and a woman, two men in the front, they were about 23 to 27, and a younger couple, a boy and a girl in back, the back seat. The radio was playing loudly and I asked if they'd turn it down. They promptly turned it up as loud as they could.

Well, I made an attempt to get their license number. I obviously got them angry and the driver made some nasty remark and I went in my house and the driver proceeded to kick on my door. Now, to answer your question, how do you know he kicked on the door if you were standing on the inside --

MR. BINDEMAN: I don't want to object on that basis, but I want to object again on the specific incidents without them being tied in.

THE WITNESS: I'd like to try and do that.

BY MR. DUNCAN:

Q. Mr. Meyers, did you make an attempt to watch the people in the car after they left your area? A. Yes. They left the house, I was busy with calling the police. Then went down the street --

546 Q. Down 28th? A. Down to the corner of 28th and M and they turned the corner.

Q. Turned right? A. Turned right and --

Q. Turned west? A. Turned -- I always get confused about directions west and east down there but I know from my position they turned in the direction of the Roundtable Restaurant.

Q. On M Street? A. On M Street.

Now, I was trying to feel brave enough to go out and follow them but my wife counseled not to. A few moments later I went down to see if they were still in the street because there's nothing between the Roundtable and two or three blocks up where I thought I could see them. I did look in Giovanni's and they were not there and then at, I asked if the police could be back at a time I reckoned they would be back about quarter

to two because that happened to be the pattern of noise in the neighborhood. The police didn't come but they did at quarter to two, just the two fellows in the front of the car and first I heard, the first I heard of it there was another kick on the door. When I got to the upstairs bedroom my wife was standing at the bedroom window and she was being called

547 the vilest names imaginable by the same fellow, the driver of the car who then proceeded to expose himself and urinate against the curb behind his car. Then they got in their car and drove away. The police came about 2:20 and drove by and looked and that was that.

I have written down the vile language if you want to read it. I certainly don't want to read it in the record.

Q. Now, have there been -- have you followed or observed or can you testify of your own observation of watching these groups of teen-agers, kids, young people going to the Roundtable? A. Yes.

Q. From the neighborhood? A. Yes.

Q. Parking in the neighborhood and going to the Roundtable?

A. Yes.

Q. Would you explain this to the Board and -- A. I understand.

It became my habit shortly after this incident to take a stroll in the evening. Now the stroll was prompted in no small part by necessity because if any of you in this room have housebroken a dog lately you find the necessity, and so at all hours we would take our walk which would run roughly from my home on 28th Street, around on Olive down to M, up on

548 27th. Sometimes a good deal of coaching is required and in the process I began to observe the pattern of what went on in the area in the evenings.

* * * * *

THE WITNESS: I observed upon occasions young men pull up in cars, sit for a while drinking beer. They would then deposit the beer cans along the strip of line I used to watch most which was on Olive between 27th and 28th. Sometimes they would throw them up against my house, the broad side of which is exposed to the parking lot. Sometimes

there was one neat group who would put them in a brown paper bag and stand them on the curb and then they would get out of the car and they would walk to the Roundtable.

BY MR. DUNCAN:

Q. Do you know that some of these people, you observed some of these people going into the Roundtable? A. I did because I followed them. Now, there are two ways to follow. One is to just walk right behind them and the other is to cut around through the park and go along

549 M and you meet the same group and you watch them go into the Roundtable. I must confess that on many occasions I cannot say I saw them go into the Roundtable, I only saw them get on the Roundtable line, which on weekend nights is fairly long especially around 10:30 to 11:30 and then a little later also. It seems to be a habit of coming early, that would be one group, and the next I would find would be a heavier pattern --

Q. These are your observations? A. These are my observations.

Now, another thing I observed was the process of urinating in the street. The most recent occasion was last Friday night. Three lads coming down -- I was walking down from 28th and M Street, three lads were coming down from Olive and 28th. Suddenly they disappeared. The people with whom I was walking said, "What happened to them?" I said, "They've gone in the alley, watch." I led my companions in and there they were urinating in the alley behind Giovanni's.

I struck up a conversation with them and said, "How is it in the Roundtable?" They said --

* * * * *

550 MR. TYSON: Why would he ask them anything like that? Why not Giovanni's or what's the other's name up there?

THE WITNESS: May I answer that, Mr. Tyson?

MR. TYSON: Yes.

THE WITNESS: Well, because they were of the young crowd that usually goes to the Roundtable and because it was part of a habit that I did quite often during the summer of asking people, "Is the Roundtable

crowded tonight?" If I saw them urinating after they were coming up 28th, but I didn't see them leave the Roundtable, so I would strike up a conversation with them and say, "Is it pretty jammed in there tonight?", and they'd say, "Yes"; or, I'd find some kids screaming and yelling. I mean, what are you going to do, walk up and say, "Were you at the Roundtable?" I'm not authorized --

MR. TYSON: It seems to me that's exactly what you've done.

551 THE WITNESS: I'd speak to them in such a way so that they would say, so that they would confirm in my mind that they had been at the Roundtable.

* * * * *

BY MR. DUNCAN:

Q. Have you, on occasion, Mr. Meyers, followed a group from the Roundtable and watched depredations to property? A. Yes.

What I began to do was cross M Street and stand and watch the flow of traffic and see where they were coming from and where they were going to. Occasionally I would pick up a group, I'd walk behind them. I watched one group that had left the Roundtable bang over a piece of construction material that had been erected to protect a piece of excavation or carpentry work that was going on at a house on Olive --

552 I think I checked the address recently as 2728, anyway it's one of the last houses toward 28th on Olive.

Q. This was a group that you observed leaving the Roundtable?

A. Yes.

Q. How old were these people? A. Well, they were youngsters. They were -- somewhere between say 18 or 21.

Q. Were they just naturally destructive or -- A. They were having a good time and they were just bouncing around and one lad ran up to the thing and did a flying kick and banged into it and the next one gave it a shove and then they went running down the street, got in their car and went away.

I have seen others that I have followed leave the Roundtable, bang on a doorknob and then run. I have seen others that have left the Roundtable urinate upon occasion in public.

* * * * *

553 Q. Have you been in the Roundtable recently? A. Yes, I have. I was in there Saturday night with my wife.

554 Q. What type of band did they have? A. They had a rock and roll band.

* * * * *

555 Q. Is there anything you've observed with respect to the entrance and exit doors of the Roundtable? A. Yes, there are two doors which are not marked entrance and exit, I believe, but we were told inside to leave by the exit door. The entrance door is the one nearest 28th Street and it has glass panels, the exit door is the one nearest 29th Street and it's solid wood and it's locked from the outside because I tested it on Monday night -- I tested it once before --

MR. BINDEMAN: Object to this. I don't know where it's getting us.

MR. DUNCAN: I'll tie this point up in argument, Madam Chairman.

THE CHAIRMAN: All right, objection over-ruled.

MR. BINDEMAN: I'll concede. One door's locked from the outside, the other door and you go in and the other door you go out of. No question about it.

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560 RICKY DANIEL SEWELL

* * * * *

DIRECT EXAMINATION

BY MR. DUNCAN:

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561 Q. Where do you live, Mr. Sewell?

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A. Manor Country Club, Maryland.

* * * * *

Q. Do you work a shift at the Amoco Service Station? A. Yes.

562 Q. At the corner of 28th and Pennsylvania and M Street? A. Yes.

* * * *

Q. How old are you? A. 19.

* * * *

Q. Are you familiar with the Roundtable? Have you been in the place? A. A very few times, yes.

Q. A few times.

When did you first go in the place? A. About a year ago or so.

Q. About a year ago.

Was it in December, 1964? A. Somewhere around there.

* * * *

563 Q. * * * Were you working a shift at the service station during Christmas of 1964? A. Yes.

Q. You were? A. (Witness nodded in the affirmative).

Q. Was it during this period that you went into the Roundtable for the first time? A. Yes.

Q. What type of band do they have in there when you went in?

* * * *

564 BY MR. DUNCAN:

Q. What did you hear? A. At that time I didn't go inside. I just went to the front door.

MR. BINDEMAN: I want to object to this witness in any event testifying what kind of band it is. He's 19 years old. He's obviously not an expert on music. He hasn't been qualified as such. (Laughter) In spite of my audience I don't think it's fair to ask a young man of 19 years old what type of music it was.

THE CHAIRMAN: Who could be better qualified than a member of this generation, Mr. Bindeman.

MR. BINDEMAN: You know I thought that as I was talking. I'll withdraw that.

(Laughter)

THE CHAIRMAN: Objection over-ruled.

MR. BINDEMAN: I agree. Maybe they're the experts, Madam Chairman.

THE CHAIRMAN: I believe this is probably the best qualified witness we've heard in two weeks.

BY MR. DUNCAN:

Q. Did you hear the music in the place? A. Yes.

Q. What kind of music was it? A. Rock and roll, I guess you call it.

565 Q. Did they have electrified guitars? A. Yes.

Q. And drums? A. Yes.

* * * *

Q. Was this that you've described rock and roll in your -- A. It's not jazz, classical or anything like that, it's pure rock and roll is what I call it.

MR. WYCKOFF: You say not jazz, classical or --

THE WITNESS: Nothing like that, just rock and roll.

* * * *

THE WITNESS: It wasn't a jazz band, it wasn't a classical music, you know, it was rock and roll, I guess you call it.

566 MR. WYCKOFF: All right.

BY MR. DUNCAN:

Q. Now, do you recall to the best of your recollection when you began observing lines at the Roundtable in order to get in the place? A. I -- not the exact date but approximately around in December sometime.

Q. What was the -- your observation -- what was the clientele for the Roundtable at that time, the average age, approximately? A. Approximately, I'd say the average was 22 or so. Somewhere in there, 21, 22.

Q. Have you been in the place since then? A. One other time.

Q. Who was playing there then? A. The British Walkers.

Q. I see. Are the British Walkers, do they fit the prior description of music that you've given us, play the same type of music? A. Same basic type, yes.

* * * *

571 MR. DUNCAN: Now, that completes my case.

572 MR. BINDEMAN: I want to call Mr. Berman back for two or three short questions.

* * * * *

573 GEORGE BERMAN

* * * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

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574 Q. You also heard Captain Kennedy testify yesterday with respect to an incident that when Mr. Carter tried to stop a fight and was hurt or stabbed in the melee, where did that take place? A. In the gasoline station when we were on our way -- in the gasoline station at 29th and M Street, Northwest.

Q. Did it, in fact, take place in front of your restaurant? A. No, it did not take place in front of the Roundtable.

CROSS EXAMINATION

575 BY MR. DUNCAN:

Q. How far is that gas station from your place? A. It's on the corner. Seven or eight doors away, I don't know how many feet.

* * * * *

[Filed January 31, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARBER, INC.
t/a Roundtable Restaurant
2813 M Street, N. W.
Washington, D. C.

Plaintiff,

vs.

Civil Action No. 235-66

JOY R. SIMONSON,
JAMES G. TYSON, and
J. BERNARD WYCKOFF

As members of the Alcoholic
Beverage Control Board of
the District of Columbia

District Building
Washington, D. C.

Defendants.

COMPLAINT FOR MANDATORY INJUNCTION, ETC.

(Judicial Review of Decision of the
Alcoholic Beverage Control Board)

1. Jurisdiction hereof is founded upon Section 11-306, D. C. Code, 1961.
2. Plaintiff, Carber, Inc., is a corporation organized and existing under the laws of the District of Columbia. It is engaged in the restaurant business at 2813 M Street, Northwest, in the District of Columbia, under the trade name "Roundtable Restaurant."
3. Defendants, Simonson, Tyson and Wyckoff are members of and constitute the Alcoholic Beverage Control Board of the District of Columbia, hereinafter referred to as the "Board."
4. On June 1, 1964, the Board issued to plaintiff at said premises 2813 M Street, N.W., certain Retailer's Class "C" alcoholic beverage license permitting the sale on the premises of liquor, wine and beer.

Pursuant thereto, plaintiff opened said Roundtable restaurant at said premises, incurring obligations of approximately \$100,000.00 thereby. Plaintiff has maintained said restaurant at said premises since such time.

5. Said Class "C" license is issued each year for the period February 1 through January 31. Prior to January 31, 1965, plaintiff applied for renewal of its said Class "C" liquor license and same was renewed and issued by the Board in January, 1965 for the period February 1, 1965 - January 31, 1966. On January 7, 1966, plaintiff applied for renewal of its license for the period February 1, 1966 - January 31, 1967.

6. Prior to March, 1965 and thereafter, the Citizens Association of Georgetown (hereinafter referred to as the "Association"), a citizens association, having jurisdiction over the area in which plaintiff conducts its restaurant, did announce its intention to protest the renewal of the said license of plaintiff and other licensees on M Street, N.W. Said Association did sponsor, carry on and foment a campaign in opposition to the renewal of said licenses. Said Association urged its members to report to the Police Department any trespassing, vandalism, disorderly conduct and illegal parking of which they were aware, whether or not plaintiff or other licensees were responsible therefor. Said Association did further communicate with various officials of Police Departments in the District of Columbia urging opposition to said renewal. Said Association did further publish and disseminate to its members its Citizens Association of Georgetown News, which news publication contained regular articles identifying plaintiff's restaurant in extreme and inflammatory language, all for the purpose of inciting and urging opposition to plaintiff's renewal application.

Copies of said publications are attached hereto as Exhibit "A" and prayed to be read as part hereof. Such publications contain articles warning the citizens that the operation of plaintiff's restaurant and others will result in a decrease of their real estate property values. Some of the references to plaintiff's restaurant are as follows:

(a) That it is "a cheap honky-tonk tavern strip."

(b) That the operation of plaintiff's business will result in a decline of the whole Georgetown district which is "a irreplaceable historic district in the heart of the nation's capital."

(c) That the Association knows of nothing that has caused so much damage to residential quality and historic value as the plaintiff's restaurant and others on M Street.

(d) That "the Association knows of no greater threat to in-city family residents and to the security of person and property in Georgetown" than the operation of plaintiff's restaurant and others on M Street.

7. Defendant and Board member Wyckoff was for many years an active and participating member of the Association and its predecessor organization. He was Chairman of the Parks, Playgrounds and Recreation Committee and served as such. On May 10, 1965, he was elected Secretary of said Association. On August 20, 1965, said defendant Wyckoff was appointed a member of the Board. Upon receiving such appointment, defendant Wyckoff discontinued active participation in the Association and did thereafter no longer attend the Association's meetings. He remained, however, on the mailing list of the Association and received all correspondence mailed to the membership at large. As such member of the Association on the mailing list, defendant Wyckoff did receive all of the communications attached hereto as exhibits which describe plaintiff's restaurant in said extreme and inflammatory manner and did contend that plaintiff's operation resulted in the decrease of real estate property values.

8. Plaintiff states that subsequent to defendant Wyckoff's appointment to the Board and prior to the hearing of plaintiff's renewal application, defendant Wyckoff had received many ex parte communications from the said Association referring, as aforesaid, to the conduct of plaintiff's restaurant business and objecting to the renewal of plaintiff's Retailer's Class "C" license, so that it would be unable to continue in the restaurant business.

9. As aforesaid, the ex parte communications received by defendant Wyckoff subsequent to his appointment and prior to the hearing hereof

contained many charges that the value of real estate located in the Georgetown area were adversely affected by the operation of plaintiff's restaurant and others, and would continue to be adversely affected if plaintiff's and other Class "C" licenses were renewed. Defendant Wyckoff owns and resides in certain real estate known as 3228 "O" Street, N.W., which said real estate is located in the Georgetown area and which real estate is included in the references of said Association.¹

10. On or about January 10, 1966, the said Association did pass a resolution at its meeting supporting protest efforts in opposition to plaintiff's application and urging its members to oppose said application. Said Association did make various and other efforts to obtain witnesses to testify in opposition to said application, including members of various Police Departments in the District of Columbia, and did on January 14, 1966 mail postcard to all of its members, except defendant Wyckoff, advising them of the date of the hearing on the renewal application of plaintiff.

11. Plaintiff states that the personal interest of said defendant Wyckoff in said Association, the active part played by said Association in opposing plaintiff's application for renewal, and the ex parte communications concerning plaintiff's renewal application sent by the Association to defendant Wyckoff, disqualify him from sitting as a member of the Board in this matter.

12. Prior to the hearing hereon, plaintiff did file with the Board motion that defendant Wyckoff disqualify himself or, in the alternative, that he be disqualified from any participation in the matter of application of plaintiff for its renewal of its Class "C" license. Defendant Wyckoff did file affidavit stating that he had no bias concerning the instant application and that he would decide the merits of same upon the facts presented to the Board, material contained in the administrative record, and upon the prevailing law. Plaintiff contends, however, that defendant Wyckoff had been the subject of ex parte communications from an Association of

¹ Since the hurried preparation and filing of this complaint we have learned that title to premises known as 3328 "O" Street, N. W. is in the name of Gertrude S. Wyckoff, whom we believe to be wife of defendant Wyckoff. Prompt request will be made to amend this allegation accordingly.

which he had been a member of many years and in which he had attained high honor, so that defendant Wyckoff could not fail to be aware that he would incur the displeasure of neighbors and friends if he ruled on the application contrary to the wishes of his said associates and friends.

13. Said motion was denied by the Board on January 25, 1966, and said defendant Wyckoff thereupon participated fully in the hearing on plaintiff's application, ruling on various motions, objections to evidence, and other matters pertinent to said hearing.

14. Said hearing on plaintiff's renewal application was held on January 25, 26, and 27, 1966. Thereafter, the Board took same under advisement. On January 29, 1966, plaintiff was advised that the said Board had denied plaintiff's application for renewal by a two-to-one vote, defendant Tyson dissenting. Defendant Wyckoff participated in all of the deliberations pursuant to said decision and voted to deny said application. The participation of defendant Wyckoff as a member of the Board in said hearing denied the plaintiff a fair and impartial hearing and deprived it of its property without due process of law. The refusal of defendant Wyckoff to disqualify himself and/or the refusal of the Board to disqualify him resulted in plaintiff being deprived of a fair hearing and resulted in plaintiff being deprived of its property without due process of law.

15. A transcript of said hearing is not yet available, but will be filed as soon as possible. The evidence at such hearing disclosed the following undisputed evidence:

(a) Plaintiff conducts a law-abiding, well-run restaurant. It has never been cited for any violation of the Alcoholic Beverage Control Act or the Rules and Regulations promulgated thereto.

(b) At no time during the period in which it has been in possession of its Retailer's Class "C" license has plaintiff been cited for a violation of any municipal rule or regulation of the District of Columbia.

(c) Members of various Police Departments, including No. 7 Precinct of the Metropolitan Police Department, the Military Police, the Armed Forces Disciplinary Control Board, and the Juvenile Bureau,

testified that although they had inspected the premises a total of approximately 500 times they had never seen any violation of law therein, nor any act which was contrary to law. Each stated that the business was conducted in a good, orderly manner and that they had no complaint whatsoever regarding same.

(d) The Captain of No. 7 Precinct, in which the premises are located, testified that while there had been an increase in petty crimes within the area during the past year of one per month, such increase was not significant. Said Captain praised the plaintiff's officers for their cooperation with the Police Department and their efforts to maintain an orderly place of business.

(e) No complaint whatsoever was made concerning the operation of plaintiff's restaurant as regards the interior thereof.

(f) Various persons residing near the premises complained of difficulties with parking and various acts of vandalism within the immediate area. However, none of said acts of vandalism could be prescribed to any deficiency on the part of plaintiff. Moreover, plaintiff's restaurant is located in a commercial area adjacent to a light and heavy manufacturing zone. More than one-half of the "neighborhood", as delineated by the Board, is in such commercial light manufacturing and heavy manufacturing zone.

(g) Various protestants also complained that the property value of their real estate had been reduced since plaintiff had opened its restaurant. However, no protestant produced any specific evidence of such decrease of value and it was stipulated that the valuation of each of the protestants' real estate had recently been increased by the Assessor's Office of the District of Columbia.

16. On January 29, 1966, the Board issued Findings of Fact and Conclusions of Law, holding that the said premises 2813 M Street, N.W. was inappropriate for the license desired. A copy of such Findings will be filed herein. Said Findings of Fact and Conclusions of Law are contrary to law because of the following:

(a) Said Findings are not supported by substantial evidence, viewing the record as a whole, and are clearly erroneous.

(b) Said Findings are arbitrary and capricious in that same do not give weight to the substantial evidence adduced before the Board in support of the renewal application.

(c) Said Findings are erroneous as a matter of law since the Board failed to give weight to the fact that said application was a renewal and not an original application.

17. Plaintiff states that its current Retailer's Class "C" license expires at Midnight, January 31, 1966, and if the defendants refuse to re-issue at or before Midnight on January 31, 1966, its new Retailer's Class "C" license for the period February 1, 1966 - January 31, 1967, it will be unable to continue its restaurant business and will suffer irreparable damage, loss and injury. Plaintiff states that it is unable to conduct and continue a restaurant business without a Class "C" license and that same is an essential part of its restaurant business.

18. Plaintiff further states that it has invested approximately \$100,000.00 in its restaurant business and that the value of same is in excess of \$125,000.00; that such value is based upon said restaurant being a going concern and possessing a Retailer's Class "C" license, but that the value of same would be entirely destroyed and cancelled in the event the Board fails to renew plaintiff's Retailer's Class "C" license.

19. Plaintiff has substantial expenses, including payments on original investment and rent on lease, exceeding \$3,000.00 per month. Said expenses would continue in the event said Retailer's Class "C" license is not renewed and said business is terminated, resulting in bankruptcy to the plaintiff and its officers and stockholders who have personally endorsed said obligations.

In the event plaintiff's operation is even temporarily interrupted, its good will would be seriously impaired, its business would decline, and it would, for all practical purposes, suffer great loss.

20. Unless the Board renews said Retailer's Class "C" license and the rights and privileges as a Class "C" licensee is otherwise protected, plaintiff's legal rights will be impaired and harmed and it will be permanently and irreparably damaged. Plaintiff has no adequate remedy at law.

21. Unless Defendant Board issues plaintiff's Class "C" license and plaintiff's rights and privileges as a Class "C" licensee is otherwise protected, the status quo will be altered and immediate and irreparable loss or damage will result to the plaintiff. Such loss or damage would result in plaintiff having to close its restaurant business and being unable to meet its obligations.

22. Since plaintiff's existing license terminates Midnight, January 31, 1966, it is necessary that a restraining order be issued immediately to permit the continuance of plaintiff's business after Midnight, January 31, 1966.

WHEREFORE, plaintiff prays as follows:

1. That judgment be entered directing defendants to issue to plaintiff Retailer's Class "C" license for premises 2813 M Street, N. W. for the license year February 1, 1966 to January 31, 1967.

2. That in the alternative judgment be entered remanding plaintiff's application for renewal of its Retailer's Class "C" license to the Board for a new hearing and that pursuant to the direction in Jarrott v. Scrivener, 225 F. Supp. 827 (1964) (U.S. D.C. D.C.) a fresh, new Board be appointed to hear said renewal application.

3. That pending hearing on the merits, Restraining Order and Preliminary Injunction be issued restraining and enjoining defendants and all other persons, agencies or other constituted authority from interfering with the continued operation of plaintiff's restaurant at 2813 M Street, N.W., Washington, D.C., as a Retail Class "C" licensee; and that judgment be entered authorizing and permitting plaintiff to continue operating its restaurant at 2813 M Street, N. W. with all rights and privileges granted to a Retail Class "C" licensee pursuant to the Alcoholic Beverage Control Act and the Regulations promulgated thereunder.

4. And for other relief.

DISTRICT OF COLUMBIA ss:

I, GEORGE BERMAN, President of Carber, Inc., and its duly authorized agent to execute the foregoing complaint, do solemnly swear that I have read the foregoing complaint, and that the statements therein made are true and correct except as to those statements made upon information and belief which I verily believe to be true and correct.

/s/ George Berman
President

[JURAT the 31st day of January, 1966]

BINDEMAN AND BURKA

By /s/ J. E. Bindeman
Attorney for Plaintiff

* * *

[Filed January 31, 1966]

MOTION FOR TEMPORARY RESTRAINING ORDER

Comes now the plaintiff by its attorneys and respectfully moves this Court for a temporary order restraining the defendants, their agents, servants, employees or attorneys, from in any manner interfering with the continued present conduct of the plaintiff's business pending hearing on plaintiff's motion for a preliminary injunction.

For reasons therefor, plaintiff respectfully shows that the order from which relief is sought is void because:

1. The plaintiff's Retailer's Class "C" license will expire by its terms at Midnight on January 31, 1966.
2. The denial of plaintiff's renewal application was erroneous, arbitrary and capricious and is not supported by substantial evidence.
3. The participation of defendant Wyckoff as a member of the Board denied the plaintiff of its property without due process of law and its right to a fair and impartial hearing.

4. The refusal of defendant Wyckoff to disqualify himself and/or the refusal of the Board to disqualify him resulted in plaintiff being deprived of its property without due process of law.

Respectfully submitted,
BINDEMAN AND BURKA

By /s/ J.E. Bindeman
Attorneys for Plaintiff

* * *

[Filed January 31, 1966]

MOTION FOR PRELIMINARY INJUNCTION

Comes now plaintiff by its attorneys and moves this Honorable Court for a preliminary injunction in the above entitled cause enjoining defendants, their agents, servants, employees and attorneys, from in any manner interfering with the continued present conduct of the plaintiff's business, pending a hearing on the merits, of its application for the renewal of Retailer's Class "C" license.

For reasons therefor, plaintiff respectfully shows that the order from which relief is sought is void because:

1. The plaintiff's Retailer's Class "C" license will expire by its terms at Midnight on January 31, 1966.

2. The denial of plaintiff's renewal application was erroneous, arbitrary and is not supported by substantial evidence.

3. The participation of defendant Wyckoff as a member of the Board denied the plaintiff of its property without due process of law and its right to a fair and impartial hearing.

4. The refusal of defendant Wyckoff to disqualify himself and/or the refusal of the Board to disqualify him resulted in plaintiff being deprived of its property without due process of law.

Respectfully submitted,
BINDEMAN AND BURKA

/s/ J. E. Bindeman
Attorneys for Plaintiff

[Filed January 31, 1966]

TEMPORARY RESTRAINING ORDER

Upon consideration of the Motion for Temporary Restraining Order, Points and Authorities and Affidavit in support thereof, and the verified Complaint filed herein, the Court finds as follows:

1. Plaintiff owns and operates certain restaurant business known as "Roundtable Restaurant" at 2813 M Street, N. W. in the District of Columbia, and has had issued thereto certain Retailer's Class "C" liquor license. Said Retailer's Class "C" license is issued on a yearly basis for the period February 1 to January 31 of the following year. It was originally issued to plaintiff in November, 1964.

2. Said Retailer's Class "C" license is essential to the operation of plaintiff's business and it will not be able to engage profitably in the restaurant business without same. In the event plaintiff is not issued said Retailer's Class "C" license it will be injured irreparably, in that it will be unable to operate its restaurant business and same will seriously impair said restaurant business and its very substantial value.

3. Unless defendants' denial of plaintiff's application for renewal of Class "C" license is restrained, plaintiff's existing license will expire Midnight, January 31, 1966, and plaintiff will sustain the irreparable injury referred to above.

4. Since plaintiff's existing license will expire Midnight, January 31, 1966, time will not permit notice and hearing on motion for restraining order.

5. No damage or injuries can result to defendants herein by virtue of this Restraining Order. Plaintiff does not have an adequate remedy at law.

It is, therefore, this 31st day of January, 1966,

ORDERED, ADJUDGED and DECREED as follows:

1. Defendants and each of them, their agents, successors, employees, attorneys, and all persons in active concert or participation

with them, who receive actual notice of this Order, by personal service or otherwise, be, and they are hereby, restrained and enjoined from interfering with the continued operation of plaintiff's restaurant at 2813 M Street, N.W. as a Retail Class "C" licensee.

2. Said plaintiff is further authorized and permitted to continue operating its restaurant at 2813 M Street, N. W. with all rights and privileges granted to a Retail Class "C" licensee pursuant to the Alcoholic Beverage Control Act and Regulations promulgated thereunder.

3. This Order shall expire on the 3rd day of February, 1966, unless within such time same for good cause shown is extended for a like period or unless defendants consent that same may be extended for a longer period.

4. Hearing on Motion for Preliminary Injunction is set for hearing in this Court at 10:00 A.M. on February 3rd, 1966.

5. This Order shall not be effective except upon plaintiff filing security in the amount of \$250.00 by bond or in lieu thereof by depositing cash with the Registry of this Court.

/s/ Oliver Gasch
JUDGE

Issued:

January 31, 1966 at 12:10 o'clock P.M.

[Filed February 23, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARBER, INC.,

Plaintiff,

v.

JOY R. SIMONSON, et al.,

Defendants,

Civil Action
No. 235-66

MR. AND MRS. GARDNER E. PALMER
1219 - 29th Street, N. W.
Washington, D. C. 20007

MISSES MARY AND DOROTHY L. McGRADE
1217 - 29th Street, N. W.
Washington, D. C.

MR. AND MRS. KERMIT S. MURPHY
1226 - 29th Street, N. W.
Washington, D. C.

MR. AND MRS. R. MICHAEL DUNCAN
2706 Olive Avenue, N. W.
Washington, D. C.

MRS. CLEVELAND McCAULEY
2610 Tilden Place, N. W.
Washington, D. C.

MR. LEIGH M. MILLER
2710 Olive Avenue, N. W.
Washington, D. C.

MISS MARY E. McDONALD
2724 Olive Avenue, N. W.
Washington, D. C.

MR. AND MRS. TEDSON J. MEYERS
1237 - 28th Street, N. W.
Washington, D. C.

MR. ARTHUR C. MOORE
2728 Olive Avenue, N. W.
Washington, D. C.,

Applicants for Intervention.

MOTION TO INTER-
VENE AS
DEFENDANTS

The above-captioned Applicants for Intervention move for leave to intervene as defendants in this action, in order to oppose granting of injunctive relief, interlocutory or final, to the plaintiff, and to assert the defenses set forth in their proposed answer, of which a copy is hereto attached, on the grounds that they reside in and or own residential property within the immediate vicinity of plaintiff's Roundtable establishment, that they oppose licensing the Roundtable and their opposition is a factor expressly required by statute to be considered in considering license applications, that they formally presented their objections as Protestants at the hearing before the Board on the plaintiff's application, that they have been and continue to be personally materially inconvenienced, and their valuable property rights jeopardized, by operation of the Roundtable as a retailer of alcoholic beverages, and that they would be adversely affected by any reversal of the Board's decision denying the Roundtable a license.

/s/ R. Michael Duncan

/s/ Donald L. Morgan

* * *

Attorneys for Applicants for
Intervention

February 23, 1966

[Filed March 4, 1966]

INTERVENORS' ANSWER
(Seeking Affirmance of Decision of
Alcoholic Beverage Control Board)

INTERVENORS, by their undersigned attorneys, answer the Complaint filed in this action as follows:

FIRST DEFENSE

1. Referring to paragraphs 1 through 3 of the Complaint, deny that it is the restaurant business in which plaintiff is engaged, but admit the other allegations.

2. Referring to paragraph 4 of the Complaint, allege that on June 1, 1964, the Board, expressly relying on plaintiff's representations that it planned to operate a restaurant seeking a middle-aged clientele and specializing in steaks, roast beef, and other foods, and that it definitely would not have any "rock and roll" entertainment as such, concluded that a Class C Retailer's License, for a period through January 31, 1965, "may issue if and when the applicant meets all the requirements of this and other Municipal Agencies." Deny that a license issued prior to November 25, 1964. Admit that plaintiff subsequently opened the Roundtable Restaurant at 2813 M Street, N.W., Washington, D. C., and incurred some obligations relating thereto. Deny the remaining allegations of paragraph 4.

3. Referring to paragraph 5 of the Complaint, admit that Class C Retailer's Licenses, when issued, are for a maximum of one year and terminate on January 31; admit that, after less than two months of actual operations, plaintiff obtained a license for the period through January 31, 1966, and applied on January 7, 1966, for a license through January 31, 1967. Referring to the entire Complaint, deny that Class C Liquor Licenses are subject to renewal; at most, a new license can be obtained.

4. Referring to paragraph 6 of the Complaint, deny that the Citizens Association of Georgetown engaged with specific reference to the Roundtable in any of the activity alleged and state that alleged "publications" of the Association speak for themselves and deny plaintiff's characterization thereof.

5. Referring to paragraph 7 of the Complaint, admit the allegations of the paragraph except that intervenors are without knowledge or information as to whether defendant Wyckoff read any of the correspondence noted; deny that any of the correspondence originating from the Association and sent to defendant Wyckoff specifically mentioned the Roundtable; and state that the communications speak for themselves and deny plaintiff's characterization thereof.

6. Referring to the allegations of paragraph 8 of the Complaint, state that the intervenors are without knowledge or information with respect to the allegations of this paragraph, except as they may duplicate

allegations in paragraph 7 of the Complaint, and deny that there are any communications from the said Association to Mr. Wyckoff in the record in this matter which refer specifically to plaintiff or the Roundtable.

7. Referring to paragraph 9 of the Complaint, state that intervenors are without knowledge or information whether *ex parte* communications were received by defendant Wyckoff or as to the contents thereof; admit that defendant Wyckoff owns and resides at 3328 O Street, N.W., but note that that address is not within the "neighborhood" of the Roundtable as defined by the Board.

8. Referring to paragraph 10 of the Complaint, deny the characterization in the first sentence of the action taken by the Association on or about January 10, 1966. On information and belief, the Association then adopted a resolution voicing support for an ad hoc group of property owners and residents in the neighborhood (the present intervenors) in their opposition to plaintiff's application. This ad hoc group appeared before the Board and protested the license application, and was supported by the signed objections of many persons owning or residing within the neighborhood as defined by the Board. Intervenors are without knowledge or information with respect to the allegations of the second sentence, except that the Association did mail postcard notices to its members, but not to defendant Wyckoff, advising them of the date of the hearing on plaintiff's application and of the date of hearings on two other applications for establishments that are located closer to defendant Wyckoff's residence than is the Roundtable, which other two applications were granted by unanimous decisions of the Board.

9. Referring to paragraph 11 of the Complaint, deny the implication that defendant Wyckoff has any personal interest in the Association; deny that the Association played any active part in opposing plaintiff's license application; deny the implication that any communications concerning plaintiff's license application were sent to or read by defendant Wyckoff and state that the averment that defendant Wyckoff is disqualified is a conclusion of law that requires no answer but that is unfounded in any event.

10. Referring to paragraph 12 of the Complaint, admit the allegations in the first two sentences; note that the third sentence purports merely to state what plaintiff contends and therefore requires no answer, but deny any factual implications in such contention.

11. Admit the allegations of paragraph 13 of the Complaint.

12. Referring to paragraph 14 of the Complaint, admit the allegations of the first four sentences, except that intervenors are without knowledge or information as to whether or when plaintiff was advised of the Board's action. The last two sentences are conclusions of law which require no answer, but intervenors deny the implication that plaintiff had a property interest in or to the license for which it applied.

13. Referring to the allegations of paragraph 15 of the Complaint, state that the transcript of the hearing and exhibits introduced in evidence speak for themselves; deny plaintiff's characterization of the evidence introduced at the hearing; state that the evidence adequately supported denial of the license and the denial was therefore proper.

14. Referring to paragraph 16 of the Complaint, deny each and every allegation thereof, except that for various reasons, including but not limited to the inappropriateness of the premises, the Board did decide that the license should be denied. The Board's Findings of Fact and Conclusions of Law speak for themselves. The Board properly denied the license.

15. Referring to the allegations of paragraph 17 of the Complaint, admit that plaintiff's Retailer's Class C License expired on January 31, 1966; deny each and every remaining allegation.

16. Referring to the allegations of paragraph 18 of the Complaint, state that intervenors are without knowledge or information with respect to the allegation therein except as the transcript of the hearing before the Board may contain evidence relating thereto and state that such transcript speaks for itself.

17. Referring to paragraph 19 of the Complaint, admit that plaintiff has some continuing expenses and without a liquor license might not

be able to obtain some profits it otherwise might realize, but state that intervenors are without knowledge or information as to the other allegations except as may be revealed on the record before the Board, which speaks for itself.

18. Referring to paragraph 20 of the Complaint, admit that plaintiff has no judicial remedy other than a suit for judicial review of the Board's action; deny that plaintiff has any right to a Retailer's Class C License or the rights and privileges thereof.

19. Referring to the allegations in paragraph 21 of the Complaint, deny the allegations of the first sentence and state that intervenors are without knowledge or information concerning the allegations of the second sentence. Plaintiff previously had a license effective through January 31, 1966, and has received the full benefit of that entire license. Plaintiff never had a license effective beyond that date, and thus refusal of a new license by the Board does not alter the status quo.

20. Referring to the allegations of paragraph 22 of the Complaint, deny that a restraining order is necessary to permit the plaintiffs to engage in the restaurant business.

SECOND DEFENSE

21. Plaintiff is not engaged in the business of operating a restaurant within the meaning of the District of Columbia Alcoholic Beverage Control Act and is therefore ineligible for a Retailer's Class C License.

WHEREFORE, intervenors pray that the Complaint be dismissed and judgment be entered for the defendants.

/s/ R. Michael Duncan

/s/ Donald L. Morgan

Attorneys for Intervenors

* * *

Dated: Washington, D. C.
February , 1966

[Filed March 4, 1966]

ORDER GRANTING INTERVENTION

The Court having considered the Motion To Intervene as defendants that was filed on behalf of Mr. and Mrs. Gardner G. Palmer and other applicants for intervention on February 23, 1966, it is ordered that the motion be, and hereby is, granted, and it is further ordered that the answer attached to the said motion be deemed to be filed and served on the date hereof.

/s/
Judge

Dated: March 4, 1966

[Filed March 9, 1966]

MOTION OF THE DEFENDANTS JOY R. SIMONSON,
J. BERNARD WYCKOFF AND JAMES G. TYSON
FOR SUMMARY JUDGMENT

The defendants, Joy R. Simonson, J. Bernard Wyckoff and James G. Tyson, members of the Alcoholic Beverage Control Board in the District of Columbia, move the Court for an order granting them summary judgment. As grounds therefor, these defendants aver that the complaint when read, together with the certified record of this Board in application numbered 9061, filed in this action and incorporated by reference herein and made a part hereof and the exhibits attached to all other pleadings, demonstrates that there is no genuine issue as to any material fact and that these defendants are entitled to judgment as a matter of law.

/s/ Milton D. Korman
Acting Corporation Counsel, D.C.

/s/ John A. Earnest
Assistant Corporation Counsel, D.C.

/s/ Robert R. Redmon
Assistant Corporation Counsel, D.C.

/s/ Patrick O'Donnell
Assistant Corporation Counsel, D.C.
Attorneys for Defendants

* * *

[Certificate of Service]

EXCERPTS FROM TRANSCRIPT OF
DEPOSITION OF J. BERNARD WYCKOFF

1

Washington, D. C.,
9:30 a.m., Saturday, March 11, 1966.

BEFORE

HONORABLE JOHN J. SIRICA, Judge of the United States District
Court for the District of Columbia.

* * * *

8

J. BERNARD WYCKOFF

* * * *

DIRECT EXAMINATION

BY MR. LANE:

* * * *

9

Q. Now, sir, with respect to the area of Georgetown in the City of
Washington, how long have you resided there? A. I have lived there
since 1922.

* * * *

10

Q. And after the time that you retired from the Office of Defense
Mobilization, did you become active in a citizens organization in your
community? A. I have been a member of a citizens organization in my
community since I moved there in 1922.

* * * *

Q. Had you been an officer in any citizens association in George-
town? A. Not until 1965, and at the spring meeting I was elected to
office.

Q. And what was that office? A. Secretary.

Q. Now, sir, in the period of time prior to the time that you were
nominated and elected secretary, had you been active in this organiza-
tion? A. To a degree.

Q. Now, by to a degree, would that mean that you went to meetings?
A. Occasionally.

11 Q. And let me ask you this question, Between the time that you retired from the Government and the time that you were elected to this particular office, is there any way that you could approximate how many regular meetings each year you attended? A. Three or four.

Q. Each year, and that would be about your average? A. Yes.

Q. Now, during the time, immediately prior to the time that you were elected, did you belong to any committee of the Georgetown Citizens Group there? A. Yes.

Q. And let me ask you this at this point, in Georgetown, how many civic organizations are there? A. One.

Q. And what is the name of that? A. The Citizens Association of Georgetown.

* * * * *

13 Q. For how long a period were you secretary? A. I never attended a meeting as secretary.

Q. Now, did you have anyone to assist you in performing the duties of secretary so that at the meetings of the Association, when you were not present, although serving in the position of secretary, that they served in your place? A. No meetings were held during the time that I was secretary.

14 Q. And tell me the months that that covered? A. The months were to the best of my knowledge, May, June, July, and August. Possibly June, July and August; I don't know about May.

Q. But it is your best recollection that actually, although you were the secretary of this corporation you never did anything officially as secretary of the corporation? A. I attended two executive committee meetings in the summer to the best of my memory, and made notes of what was going on at the meetings.

* * * * *

Q. At the present time, do you have a recollection of what the matters were that were taken up at the executive committee meetings? A. I do not.

15 Q. Let me ask you this then: At those executive committee meetings, do you have any present recollection that anything was taken up either with respect to the Peppermint Lounge, the Corral, or any other restaurant on M Street? A. I do not.

* * * *

Q. That was an executive committee meeting that you attended?
A. Yes.

Q. Were there any other committee meetings that you attended during this same period of time? A. No.

* * * *

17 Q. And were you familiar with the License Committee as a member prior to the time that you were appointed to the ABC Board as a member? A. I heard of the License Committee only at an executive committee meeting that I attended in the summer.

Q. And who were the members of the committee at the time that you became aware of this? A. The only person that I knew of on the committee was a man by the name of Philip Robinson, the chairman.

* * * *

18 Q. Did you have frequent contacts with Mr. Robinson during that period of time? A. Very infrequent.

* * * *

20 Q. Let me ask you this: As a member of the Citizens Association of Georgetown, were you aware of the policy of the organization in opposition to certain restaurants on M Street in Georgetown, as shown
21 by the exhibit which you have just seen? A. Yes.

Q. For how long a period of time were you aware of this position of the Citizens Association of Georgetown? A. I first heard of it in 1965.

Q. And when you were secretary of the Association? Is that a fair statement? About the time that you became secretary of the Association, you learned of the policy of the Association toward these places? A. Yes, as I learned of many things.

Q. Now, let me ask you this: As in this connection of a policy of the Association, I am going to give you the names of certain restaurants in this same immediate area, and I am going to ask you what the policy was with respect to them. Simply answer whether you know or not know what the policy was.

The Town House Restaurant?

* * * * *

22 Q. At the same time that we are talking about this, all these questions are directed to the time that you first told us about, when you became aware of the policy of the Citizens Association of Georgetown, which was in 1965. A. I do not know.

* * * * *

Q. Mac's Fife and Drum? A. I do not know.

* * * * *

Q. Kaycee, Inc., that is one of the plaintiffs in this action? A. I do not know.

Q. Now, Seabright, Inc., those two corporations are the plaintiffs here, one operates the Corral and the other the Peppermint Lounge.

23 Now, did you become aware of the policy with respect to the Corral and Peppermint Lounge? A. I knew nothing about it.

Q. And I am going to ask you two more, the Crazy Horse and the Roundtable? A. Knew nothing about it.

* * * * *

27 Q. To your knowledge, at any time thereafter did the Citizens Association of Georgetown or any of its members take any active part in furthering your candidacy for the ABC Board? A. None that I know of.

Q. Let me ask you this question: There came a time in this particular case that Mrs. Shackelton testified in connection with the Corral and Peppermint Lounge cases; is that right? A. Yes.

Q. Let me ask you this: Is she a member of the Citizens Association of Georgetown? A. I think so.

* * * * *

29 Q. When did you do something to further your appointment to this position? A. I did nothing to further my appointment.

* * * *

47 Q. Mr. Wyckoff, do you know the following people and whether or not they are members of the Association, a Don B. Harris? A. I don't know him.

Q. Don't know him at all? A. Well, all I know, he testified at the hearing.

Q. Do you know where he lives? A. I do not.

Q. Do you know an Alvin Harper? A. No, I do not.

Q. Do you know a Sam Levy? A. Yes.

Q. How long have you known Mr. Sam Levy? A. Ten years.

Q. Does he live in your neighborhood? A. He lives on M Street, just west of Wisconsin Avenue.

48 Q. And how close is that to your home? A. Two blocks.

Q. Do you know a Mr. and Mrs. Capello? A. I know Mrs. Capello is an actress. I do not know Mr. Capello.

Q. Now, did any of these people -- and there is no question these are people who testified at the ABC Board hearing? A. They did.

Q. Were any of these people, or did any of them serve with you in any of your committee assignments at any time with the Citizens Association of Georgetown? A. Sam Levy. Oh, the Citizens Association?

Q. Yes. A. Oh, no.

Q. Well, did you have an acquaintance with him from some other organization that you served with? A. We have been on a Board together.

Q. And what Board was that? A. The Board of the Children's House of Georgetown.

Q. Now, you were chairman of a Parks Committee, were you, at one time? A. Yes.

49 Q. Of the Georgetown Citizens Association? A. Both the Georgetown Citizens Association, and its successor, which is the Citizens Association of Georgetown.

Q. Did Mr. Levy serve with you in that committee? A. Oh, no.

* * * * *

55 Q. Now, sir, during the period of December, 1965, and January, 1966, did you make any efforts to have yourself reappointed for the full term? A. I did not.

56 Q. Did any person that you know -- well, let me ask you this: Did Mrs. Shackelton take any steps with respect to your reappointment? A. Not that I know of.

Q. Did Captain Belin take any steps with respect to your reappointment? A. Not that I know of.

Q. Did any person connected with the Georgetown Citizens Association take any steps to your knowledge with respect to it? A. Not that I know of.

* * * * *

58 Q. Let me ask you this: During the period from August 20th, 1965, until your appointment in February, reappointment, what occasions
59 did you have to see Mr. Belin. A. I saw Mr. Belin as a witness at the hearing. I saw him otherwise, never.

Q. And that would include the entire month of August of '65, September, '65, October, '65, except for the period of time during which he actually appeared as a witness at the ABC Board; is that correct? A. Yes.

Q. Now, during that time did you have any telephone conversations with him? A. I did not.

Q. And your answer would be the same with respect to the month of August, September, October, November, December and January? A. From the time of my appointment.

Q. Now, I am going to ask you the same question with respect to Mrs. Shackelton, the witness who appeared, any telephone calls in August, 1965? A. No.

Q. September, '65? A. No.

Q. October? A. No.

Q. In November you saw her at the hearing? A. Yes.

60

Q. December? A. No.

Q. And January? A. No.

* * * *

CROSS EXAMINATION

BY MR. STEIN:

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62

Q. Do you know a Miss or Mrs. Draper? A. Yes.

Q. Would you give us her first name? A. I don't know.

Q. Could you tell us how old she is, approximately? A. Sixty.

Q. Have you known her a long time? A. Eight or 10 years.

* * * *

Q. And you are unable to recall whether she talked with you personally about it? A. I don't remember talking with her personally about any of these cases.

63

Q. Now, the Roundtable is at 2813 M Street, Northwest. How many blocks do you live from 2813 M Street? A. Six or seven.

* * * *

Q. Have you ever resigned from the Citizens Association? A. No.

Q. You are presently a member in good standing? A. My membership has expired, I believe.

Q. But you took no steps to withdraw your membership? A. No.

Q. You took no steps to have your name removed from the mailing list? A. No.

Q. You still received the Citizens Association news after your appointment on August 20th, 1965? A. Yes.

* * * *

64

Q. These meetings that you say you attended, approximately 3 or 4 a year, in prior years, did the subject of the restaurants on M Street ever come up? A. If they did, I didn't recognize them as anything that meant anything to me.

Q. Did you participate in the discussions? A. I did not.

* * * *

65 Q. You were unaware that a letter was sent to Walter Tobriner on August 4th? A. I was out of town on August 4th.

Q. When you attended this executive meeting, do you recall the taking up of the composition of this letter? A. I do not.

66 Q. Until this was handed to you, you were unaware that any letter was sent; is that correct? A. Yes.

Q. You never read that document before? A. I have no memory of ever having seen it before.

Q. Do you recall nothing of what occurred at the executive meetings held during the summer of 1965? A. Practically nothing. I was brand new to the job, and I was making notes of what was being done.

Q. Now, your statement would be that you do not recall anything was taken up concerning the letter to the Honorable Walter Tobriner or not? A. I do not recall anything.

Q. But to pin this down, the fact is that your memory does not allow you to state whether that occurred or not? A. My memory does not allow me to state.

Q. You do not recall any discussions in other meetings of the Citizens Association concerning the situation with these restaurants on M Street? A. You say I do not recall?

Q. Yes, is that your testimony? A. I do recall one meeting where they discussed the situation on M Street.

67 Q. Could you inform the Judge of when that meeting was held? A. Early in 1965, well, before the summer of 1965.

Q. Would that be in May perhaps? A. Possibly.

Q. Was this an open meeting or an executive meeting? A. An open meeting.

Q. And who spoke? A. The mention of the M Street situation was made by the editor of the Georgetown Spectator. I understood later that that was his job. And he said something about it, and my memory of it is only because a young man who happened to be the owner of one of the restaurants on M Street protested what he was saying about M Street.

He said M Street is a fine place, and the Spectator man said it was not.

This is my only memory of anything that was ever said about M Street at any Citizens Association meeting that I ever went to. I didn't go to many.

* * * * *

68 Q. Did you ever participate in the policies which were announced in these newsletters, participate in the formulation of the policies? A. No.

Q. Do you know when these policies were formulated? A. No.

* * * * *

72 Q. Just a few more questions, Mr. Wyckoff.

I am going to read you some more names, Mr. Wyckoff, and stop me if you recognize any of them.

Mr. and Mrs. Gardner E. Palmer? A. I met Mr. Palmer for the first time at the meeting of the executive committee in December of 1965; otherwise, I didn't know him, I haven't seen him, except at the hearing.

Q. He was a member of the Citizens Association to your knowledge? A. Yes.

Q. And having knowledge that he was a member of the Citizens Association, you saw him again appear at the hearing as a protestant; is that correct? A. Yes.

73 Q. Kermit S. Murphy? A. No.

Q. Michael Duncan? A. No.

Q. Mrs. Cleveland McCauley? A. No.

Q. Mr. Arthur C. Moore? A. No.

Q. Mr. Wyckoff, did you have any records or memoranda or writings or notes in connection with the hearings that we are discussing here today, which do not appear in the record filed at the ABC Board? A. I have none.

* * * * *

74 Q. Apart from the exhibits that I have shown you and the newsletters from the Association, have you received any other communications of any kind concerning the restaurants on M Street? A. None that I know of, with one exception.

Q. And of course, that leads us to the question of telling about the exception. A. It was an anonymous letter, and it is the only one which I have received.

Q. Did you preserve a copy of that letter? A. No.

Q. Do you recall its contents? A. Well, it had to do with a rather critical statement in regard to an establishment which was about to be, the license of which was about to be renewed, and it raised some questions.

Q. Was this -- A. The only one.

Q. Was this anonymous letter critical of one of the restaurants that we are here today about? A. Yes.

Q. Which one? A. The Crazy Horse.

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80

Washington, D. C.,
10:30 a.m., Monday, March 14, 1966.

* * * * *

82

J. BERNARD WYCKOFF

* * * * *

CROSS EXAMINATION

BY MR. REDMON:

Q. Mr. Wyckoff, on Saturday morning in the early part of your deposition, you referred to the name of a man named Noel Macy. I would like to ask you, sir, with respect to your appointment on the Board, as a member of the Alcoholic Beverage Control Board, what if any knowledge you have concerning that appointment, and if you would, sir, start at the beginning and tell us what you know. A. About the middle of July of last year my wife and I went to New Hampshire for a two-week vacation there. We had been there about a week, and I had a phone call from Mr. Macy. It happened that before I left, I had seen Mr. Macy and told him that I had retired from my last business, job, and I was undertaking a little vacation, and I didn't look forward with any too great pleasure to retiring.

He told me by phone that he had seen in the newspaper that there was an appointment to be made to the ABC Board, and he said: I immediately called Joe Rauh and suggested that the Central Democratic Committee

83

might put your name, give your name to the Commissioners as a candidate. He said: Mr. Rauh asked me if you would accept if appointed.

Mr. Macy said: I told him I would call you, and I have been trying for 24 hours to find you, and he was at that time on his way to Ohio, he was going to the West Coast, and he was in Ohio, and he would be gone for a long time.

I said: What is the ABC Board? And he named it.

And I said: Well, how much time would this take?

And he said: This is a full time job with a salary -- to my surprise.

I had no more conversation with him than to say: If I were to be appointed to the Board, I would certainly consider it; in fact, if you want to know, I would accept.

The last I heard -- we stayed in New England for 3 more weeks, visiting in Maine, and drove home slowly and got home, oh, a little before the middle of August, and I met on the street immediately when we got here, a man who said: I see you are a candidate for the ABC Board.

I asked him where he saw it, and he said it was in the Post the day before. He said the Post story said that you and three women have been suggested, their names have been suggested to the Commissioners as candidates by the Central Democratic Committee.

84 I got myself a copy of the Post of the day before, and I found a very small piece in there about it.

There was nothing more about this until another notice in the Post, two days later, saying the Commissioners had now received the names of 20 candidates for the opening on the ABC Board, and they said something about it being important that somebody be appointed because the Board had to be filled up shortly.

And I knew nothing more about it, and I thought, well, one out of 20 is a very unlikely thing anyway. I knew nothing more about it until on the 19th of August, I had a phone call from Commissioner Duncan's office asking me to come down that afternoon.

Commissioner Duncan said: We have boiled down 20 odd candidates to 3. You are one of the 3.

He didn't say I had been appointed. Surprisingly all I know, Commissioner Duncan had a telephone call from somebody, and he said, Okay, and the door opened, and in came newspaper people saying, How old are you, what is your education, what is your business, and everything else. And I found myself, without having been told, and Mr. Duncan said, Okay, come down tomorrow morning at 10 o'clock, and you will be sworn in.

Q. Is that the extent of it? A. That is the extent of it.

85 Q. Now, with respect to any efforts made on your behalf to secure this position, you have already testified that you contacted no one or made no efforts to seek the aid of anyone to get this job; is that correct?

A. That is correct.

* * * * *

86 Q. Now, if I can refresh your recollection, Mr. Wyckoff, do you recall in the executive session in July, I believe it was, 1965, and shortly after you had been appointed secretary of the Association, that at a meeting of the executive committee a discussion was had concerning the application for a license, an ABC license, of a place called the Steak Pit?

A. I have a memory of the Steak Pit having been discussed probably at that meeting, because it had a peculiar spelling of pit, p-i-t-t, and I as secretary of the meeting was not taking part in the discussion, but writing in longhand, and I remember asking if the name was not being incorrectly spelled.

Q. Do you recall, sir, any vote that may have been taken at that meeting concerning the delegation of power to the president of the Association concerning opposition to any new licenses in the future? A. I don't recall it.

87

Q. Now, concerning any questions of policy with respect to the Association, do you know now or did you know at the time what any policy might have been of the Association concerning M Street restaurants?

A. I do not.

Q. Do you recall having any discussion with anyone -- A. I beg your pardon? You were saying as of early July?

Q. That is correct. A. I did not.

Q. Mr. Wyckoff, are you a member of any other associations or groups or housing boards, other than the Citizens Association? A. Several of the boards, yes.

Q. What would those be, sir? A. Well, I have been quite active in the Washington Planning and Housing Association for a great many years, for a number of years, president for a number of years, and I have been on the Board of the Georgetown Children's House, and really chairman of their Finance Committee, which is quite a lot of work.

I have been a member of the Board of the Episcopal Home for Children for a number of years, and some other things.

* * * * *

90 Q. Now, Mr. Wyckoff, during the course of your membership with the Board, you have had occasion to hear at least 6 protest hearings concerning the applications for restaurants in the Georgetown area, have you not? A. Yes.

Q. Specifically, the three involved here, the Corral, the Peppermint Lounge, and the Roundtable, and you were also a member of the Board at the time the protest hearings were heard in the Crazy Horse, Mac's Fife and Drum, and Paul Cooper's Restaurant, up here on Wisconsin? A. Yes.

91 Q. Now, in each of those instances, there was vigorous opposition from the residents of the Georgetown area, was there not? A. Yes.

Q. May I say, sir, did you not vote to grant the license for the Crazy Horse, Mac's Fife and Drum and Paul Cooper's?

* * * * *

THE WITNESS: I did.

* * * * *

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CROSS EXAMINATION

BY MR. MORGAN:

Q. Mr. Wyckoff, with respect to the Roundtable hearing I think you may recall that just before the hearing began in January, the applicant filed a motion that recited, among other things, that the Citizens Association of Georgetown, at its January meeting in 1966, had taken some position in opposition to the application.

I wonder whether you had previously been aware of the position taken by the Citizens Association on the Roundtable application? A. No, I was not.

Q. Do you recall ever participating in a meeting of the Citizens Association, any meeting, that discussed the Roundtable license application? A. No, I do not.

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REDIRECT EXAMINATION

BY MR. O'DONNELL:

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Q. Is it your testimony that you have no recollection of reading in January of 1965 of the protest hearing involving the Citizens Association of Georgetown and the Corral and Chateau Brian cases on M Street?

A. I didn't know anything about them. I was away most of January, which may explain it.

Q. But at any rate, you have no recollection of reading about that in the public press; is that correct? A. I have no recollection.

* * * * *

EXAMINATION

108

BY THE COURT:

Q. Now, you stated I think that you knew Mrs. Shackelton? A. Yes.

Q. Now, in her testimony did she take the position of a witness appearing in opposition to the application on this occasion that you voted to grant the application? A. Yes.

Q. She opposed the granting of that application? A. Yes.

Q. And I take it from Captain Belin's testimony, he also opposed the granting of that application? A. Yes.

Q. But regardless of that you voted in favor of granting the application; is that correct? A. Yes.

Q. Now, do you recall offhand whether or not either one of those persons appeared in connection with either one or both of the other applicants that you voted in favor of, to oppose or to grant the application? Offhand, if you do? A. Captain Belin testified at the hearing regarding the two that were renewal, and he testified against the renewal, I am quite sure, of the two that were approved on M Street.

109

Q. That is what I am trying to find out. So that the way the record stands, you voted for the approval of three applicants, regardless of the fact that Captain Belin opposed that application, or those applications, and also Mrs. Shackelton? A. Yes.

Q. Now, in connection with any of those hearings, the three that you voted in favor of, did either one of those persons ever try to contact you before the hearing or during the hearing regarding their views on anything concerned with the case? A. Never.

Q. Did they ever contact you in any case on which you have sat on, or in which you were called upon to cast a vote, regarding their interest, their personal interest, or the Association interest in connection with any application that you might consider as a member of the Board? A. Never.

Q. Has anyone, to your knowledge, ever tried to influence you in any decision or judgment that you might be called upon to reach in connection with any application that you voted for or against? A. No.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

Washington, D. C.

Tuesday, March 29, 1966

The above-entitled case came on for hearing on motion at 10 o'clock a.m., in the United States District Court for the District of Columbia, in the Courthouse at Washington, D. C.

BEFORE

HONORABLE JOHN J. SIRICA, Judge of the United States District Court for the District of Columbia.

* * * * *

THE COURT:

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MR. LANE: We are perfectly willing to submit it all and simply argue from the entire deposition those portions of it that we deem most important.

THE COURT: Well, you may do that.

MR. BINDEMAN: Yes, and on behalf of the Plaintiff Carber, that is our position too.

* * * * *

DOROTHY L. ALBERT

* * * * *

DIRECT EXAMINATION

BY MR. BINDEMAN:

* * * * *

Q. Incidentally, when we say license year 1965, that actually refers to the license year February 1, 1965, through January 31, 1966; is that correct? A. Yes, sir.

Q. So the license year in effect runs from the 1st of February until the 31st of January of the succeeding year? A. Yes, sir.

7 BY MR. BINDEMAN:

38 Q. Now, Mrs. Albert, under the existing regulations, is there any provision for obtaining permission of the Board if a restaurant or a Class C licensee wants to change its form of entertainment? A. No, sir.

8 Q. Has the Board attempted to have the regulations changed to pro-
39 vide for such mechanics? A. Yes, sir.

Q. When was it?

THE COURT: Don't answer.

I notice you got up, and of course, the witness wouldn't know whether you were going to object or not.

MR. REDMON: That is correct, Your Honor. Perhaps it should make a proper objection to this line of questioning right now, which it appears will be any change of format or recommended change by the Board itself to the Commissioners, and whether or not such request has been made to the Board of Commissioners should not be material to the basic issue.

THE COURT: What is the materiality of that?

* * * * *

9 MR. BINDEMAN: Your Honor, a very substantial part of the Board's
40 ruling in respect to the lack of moral fitness of the licensee concerned a fact with respect to a change and modification of entertainment by this licensee admittedly, Your Honor, and it said at its original application for license in June, 1964, that it would operate a restaurant to appeal to middle-aged people and have a certain kind of entertainment.

There was a great deal of testimony, as Your Honor has recognized, from a reading of this record that had to do with so-called rock and roll, and the claim that Carber had rock and roll.

Carber testified that while it didn't have rock and roll as such, it certainly had these electric guitars and so forth, and they said that they tried to appeal to younger people. There was a modification of that.

Now, it is our position, first of all as the witness has already said, that there is no procedure at the ABC Board to come to the ABC Board
10 to ask for a change of entertainment.
41

And secondly, our point is that the Board itself knew it, because the testimony will be that in the Board's letter to the Commissioners, it made exact mention not only of the fact that it had no procedure, but it also said that it would be difficult to bring any prosecution against the licensee which changed its form of entertainment, because it said, it would state that it had a change of intention.

This is exactly what happened here, and I want to show it, and I think it is important for the Court to have consciousness on the part of the Board and an admission by the Board that exactly what we allege in our case was true. They have said so.

* * * * *

[BY MR. BINDEMAN:]

Q. Now, would you state to us the differences within the act and regulations between an original and a renewal application, and I would like to ask you various questions as to what is required under an original and have you tell me if those matters are required under a renewal application.

First, is a picture of the premises required under an original application? A. Yes, sir.

Q. Is a picture required when a renewal is filed? A. No, sir.

Q. And if we have a corporation, a corporate applicant, are minutes of the corporate meeting required under an original application?

A. Yes, sir.

Q. Are they required under the renewal application? A. Only if there are changes within the corporation.

Q. Assuming no changes, are they required for a renewal? A. No, sir.

* * * * *

Q. Now, is a placard required of the premises under an original application? A. Yes, sir.

Q. Is a placard required on a renewal application? A. Yes, sir.

Q. Does the placard on a renewal application have any different language than the original placard? A. Yes, sir.

Q. What is that difference? A. It is stated that it is for the renewal of.

Q. Does it use the word "renewal"? A. Yes, sir.

* * * * *

19 Q. Now, going back to the differences between an original and a
51 renewal application, do I understand that the law requires two weeks' advertisement by placard for an original application; is that correct?

A. Yes, sir.

Q. And two weeks by newspapers; is that correct? A. Yes, sir.

20 Q. Does a renewal require two weeks' advertising by placard?
51

A. Yes, sir.

Q. Does it require advertisement by newspapers? A. No, sir.

Q. Now, with respect to an original application, when one is filed, is any letter sent by the Board to the original applicant with respect to the date that his case is coming up? A. If it is protested, yes, sir.

Q. If it is not protested is any letter sent? A. No, sir.

Q. With respect to a renewal is each licensee sent a letter advising him that the license year is about to expire and that he should file an application for renewal? A. Yes, sir.

Q. With respect to an original application are licensees interviewed and investigated for residence and employment? A. Yes, sir.

Q. Is that done for licensees on renewal? A. No.

Q. Is a police report required on an original application? A. Yes, sir.

Q. Is it required on a renewal application? A. We ask for police comment but it is not required.

21 Q. Is what is known as a route sheet required on an original appli-
52 cation? A. Yes, sir.

Q. Is it required on a renewal application? A. No, sir.

Q. Will you tell the Court very briefly what a route sheet is?

A. We send to other departments to see whether or not they have other licenses, that are required to operate restaurants or stores. If they have applied for it.

Q. Now, is a financial statement required of an original applicant?

A. If it is transferred, yes, sir.

Q. Suppose it is an original application? A. No.

Q. But if I had bought a license and seek to transfer it some place, I do need a financial statement; is that correct? A. Yes, sir.

Q. And the financial statement relates to various financial data concerning the purchase of the business? A. Yes, sir.

Q. Is that required of a renewal application? A. No, sir.

Q. Now, Mrs. Albert, is a statement A required of an original application? A. Yes, sir.

22 Q. Will you tell the Court very briefly what is a statement A?

53 A. The owner of the building's permission to have a license of the premises.

Q. Is that statement required of a renewal application? A. No, sir.

Q. Now, are the forms different from an original application to a renewal application? A. Yes, sir.

Q. Do you have with you the so-called long application form for renewal? A. A new one?

Q. For an original, excuse me. A. Yes.

Q. Do you also have a renewal form? A. Yes, sir.

Q. Which is the original? A. The 5 pages.

Q. Which is the renewal? A. The single.

MR. BINDEMAN: I ask they be marked.

* * * * *

38 MR. BINDEMAN: Now, Your Honor, finally a category in each of
69 which cases the ABC Board uses the term renewal, contrary to their findings in our case that there is no such thing as a renewal, and that the term is not used.

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MR. BINDEMAN: I would just like to read these with the numbers, with the understanding that they will be submitted later.

THE COURT: All right.

MR. BINDEMAN: Astro Liquors, Incorporated, Application No. 681.

B & H Corporation, Application No. 5186.

Dolar Corporation, Application No. WH 62.

Application of John Bryant Ellis, Application No. 8633.

Application of G. W. Campus Club, Application No. 8958.

Application of the Gas Light Club, No. 8314.

Application of Pandora P. Gogas, G-o-g-a-s, Application No. 7591.

Pandora P. Gogas again, No. 2492.

H & B Corporation, No. 7180.

K Street Restaurant, Incorporated, No. 1484.

Koskouras, George, No. 1410.

L & H Corporation, No. 6929.

Daniel T. Long, No. 3252.

MacArthur Liquors, Incorporated, No. 211.

MacArthur Liquors, Incorporated again, No. 211.

Those are different dates. I will have to get the dates.

Oh, I do have the dates, excuse me.

The first MacArthur Liquors is December 29, 1958; and the second MacArthur Liquors is January 21, 1960.

Marifax Company, Incorporated, No. 8071, January 28, 1958.

Marifax Company, Incorporated again, No. 8071, January 29, 1965.

Mecca Temple No. 10, No. 8471.

Benjamin Mendelson, No. 5500.

Albert Perlman, No. 671.

Prajo, P-r-a-j-o, Incorporated, Application No. 8821, January 31, 1963.

Prajo, Incorporated again, No. 8821, January 27, 1965.

Bernard Shulman, No. 1419.

Seabright, Incorporated, No. 7212.

Fadel Elias Taweel, No. 4579.

Twelve Hundred Restaurant, Incorporated, No. 5717.

And Wagshal's Delicatessen and Liquors, Application No. 380.

And those that I have just read, Your Honor, in each of those cases the ABC Board referred to the specific word renewal.

THE COURT: All right, I understand that.

MR. BINDEMAN: The same ruling, Your Honor?

THE COURT: Yes, the same ruling.

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BY MR. BINDEMAN:

Q. Mrs. Albert, since you have been associated with the Board, and exclusive of the present cases, has the Board had any case where an application for renewal has been denied for any reason other than the licensee's criminal record during the year or the number of his citations?

MR. REDMON: Objection, Your Honor, to that question.

* * * * *

THE COURT: All right, the objection is sustained. Let us proceed.

* * * * *

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BY MR. BINDEMAN:

Q. Mrs. Albert, with respect to the matter of the law of procedure, has the Board ever proceeded as it did in this case with respect to finding an applicant not suitable under Section 14(a)(1)?

MR. REDMON: Objection, Your Honor, that is the same question again.

THE COURT: I will sustain the objection.

MR. BINDEMAN: Well, may I simply make a proffer of proof for the record, Your Honor?

THE COURT: You may make a proffer.

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MR. BINDEMAN: If Your Honor please, the plaintiff would show by this witness that the ABC Board has in only two other cases in its history denied a renewal. In both of those cases, one of which was the application of Hyman J. Minkoff, which later went to the Court of Appeals, as Minkoff vs. Payne; and the second case, the Twelve Hundred Restaurant, Incorporated, Application No. 5717, which as far as I know had no Court proceedings afterwards, and the ABC Board proceeded by way of rule to show cause, asking the applicant to show cause to the satisfaction of the Board that the licensee is capable of operating the establishment as required by law and giving to the applicant specific notice of the offenses of which the Board felt the applicant was guilty.

* * * * *

142 MR. BINDEMAN: Well, we don't know about this, Your Honor. Certainly we contend that the decision indicates it, and during the course of the hearings there were many objections made by both sides, and some objections were sustained and some objections were overruled.

* * * * *

144 Now, Your Honor, with respect to the second point which we raised, and that is the question of the approach of the Board with respect to original applications and with respect to a notice, Mr. Redmon again told Your Honor that the legislative history showed that the Congress wanted to have some control over licenses.

Each year people come back, he said, and I think I put it down as he said it, and the license must be reconsidered, there must be annual supervision.

Now, there is no question about that. Counsel have not gotten the thrust of our argument. There is no question about the fact that licenses
145 were issued for one year. It was for the purpose of controlling licenses and for the purpose of making sure that there would be annual supervision.

But that is not the point at all. Our point here is that, of course, there must be supervision, and of course, there has got to be this annual consideration, but we say that what the Board must do when it weighs the application for renewal is to take all the intervening equities into consideration.

* * * * *

146 MR. BINDEMAN: But it is not sad, Your Honor, if the ABC Board had applied the proper standard. If the ABC Board had said, We won't consider an applicant for renewal in a different position that we consider an original applicant and take and consider all these things, they still may have found against the applicant, no question about that, and we say they have ample power to do it in a proper case, but they didn't do it here.

* * * * *

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I want to make it very clear before I leave this point that we do not question the right of the Board to have supervision. We do not question the fact that a license is good for one year.

The only thing that we question is the weight which the Board must give when it has before it a protested application for renewal. The Board in this case it would give none to the licensee if he were coming in on a renewal, and this is the point that I submit is contrary to law.

* * * * *

PLAINTIFF'S EXHIBIT NO. 9BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: B & H Corporation
T/A Hayloft
Applicant for the Renewal of a Retailer's Class
"C" License No. 9627 at premises
1411 H Street, N. W.
Application No. 5186

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing on the 19th day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant and witnesses who testified on behalf of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That B & H Corporation, trading as the Hayloft, presently has a Retailer's Class "C" license at 1411 H Street, N. W.

(2) That applicant has had a license of a similar class at the same premises since February 1, 1957. However, a license of this class has been in effect at these premises since October 4, 1943. That the present licensee, an applicant herein, now wishes to renew its Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and paid the fee therefor.

(3) That various business people in the neighborhood voiced objection to the issuance of this license, asserting that the applicant's patrons contributed to the generally adverse and unpleasant conditions existing in the area. No probative evidence, however, was presented by the above witnesses that since licensee's patrons did, in fact, contribute to the said conditions.

(4) No remonstrants at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the

applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were Police matters and not subject to the jurisdiction of this Board.

(5) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. Several of the officers stated that they had been in the kitchen and that it recently was remodeled. They further testified that while they had, on some occasions, observed food being served, however, the occasions were infrequent. Further, the officers did not at any time determine the amount of prepared and unprepared food on the premises and available.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(6) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1957, the applicant herein has gained substantial property

rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 1411 H Street, N. W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 5186
gmh

PLAINTIFF'S EXHIBIT NO. 10

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Pandora P. Gogos
T/A Moulin Rouge
Applicant for the Renewal of a Retailer's
Class "C" License No. 9112 at premises
407 - 11th Street, N. W.
Application No. 7591

FINDING OF FACT

The above entitled application, having been protested came on before the Alcoholic Beverage Control Board for public hearing on the 23rd day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That Pandora P. Gogos, trading as the Moulin Rouge, presently has a Retailer's Class "C" license at 407 - 11th Street, N. W.

(2) That applicant has had a license of a similar class at the same premises since May 7, 1954. However, an Alcoholic Beverage Control Board license has been in effect at these premises since March 19, 1934. That the present licensee, and applicant herein, now wishes to renew her Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and paid the fee therefor.

(3) No remonstrants at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the applicant was of excellent character.

(4) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police

testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P. M. and 2:00 o'clock A. M. Several of the officers stated that they had been in the kitchen. They further testified that while they had, on some occasions, observed food being served, however, the occasions were infrequent. Further, the officers did not at any time determine the amount of prepared and unprepared food on the premises and available.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(5) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1954, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 407 - 11th Street, N. W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 7591
gmh

PLAINTIFF'S EXHIBIT NO. 11

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Pandora P. Gogos
T/A Rendezvous Bar & Grill
409 10th Street N.W.
Holder of a Retailer's Class "C" License No. 7978
Application No. 2492

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing on the 23rd day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That Pandora P. Gogos, trading as the Rendezvous Bar & Grill, presently has a Retailer's Class "C" license at 409 10th Street N.W.

(2) That applicant has had a license of a similar class at the same premises since April 11, 1950. However, a license of this class has been in effect at these premises since September 12, 1945. That the present licensee, and applicant herein, now wishes to renew her Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and paid the fee therefor.

(3) No remonstrants at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the applicant was of excellent character.

(4) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. Several of the officers stated that they had been in the kitchen. They further testified that while they had, on some occasions, observed food being served, however, the occasions were infrequent. Further, the officers did not at any time determine the amount of prepared and unprepared food on the premises and available.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(5) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1950 the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 409 10th Street N.W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

#2492

dla

January 29, 1959

PLAINTIFF'S EXHIBIT NO. 12

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: H & B Corporation
T/A Rand's Restaurant
Applicant for the Renewal of a Retailer's Class "C"
License No. 9903 at premises
1416 Eye Street, N.W.
Application No. 7180

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing on the 19th day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant and witnesses who testified on behalf of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That H & B Corporation, trading as Rand's Restaurant, presently has a Retailer's Class "C" license at 1416 Eye Street, N.W.

(2) That applicant has had a license of a similar class at the same premises since December 17, 1954. However, a license of this class has been in effect at these premises since August 13, 1952. That the present licensee, and applicant herein, now wishes to renew its Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and paid the fee therefor.

(3) That various business people in the neighborhood voiced objection to the issuance of this license, asserting that the applicant's patrons contributed to the generally adverse and unpleasant conditions existing in the area. No probative evidence, however, was presented by the above witnesses that said licensee's patrons did, in fact, contribute to the said conditions.

(4) No remonstrants at any time questioned the good moral character of the applicant. The principal testimony adduced tended to indicate

that the applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were police matters and not subject to the jurisdiction of this Board.

(5) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. However, no particular effort was made to determine the amount of food on hand or the amount of unprepared food on hand.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain, showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(6) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1954, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much

of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 1416 Eye Street, N.W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakley

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 7180
Jan. 29, 1959
aro

PLAINTIFF'S EXHIBIT NO. 13

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Daniel T. Long
T/A Parkside Grill
823 - 14th Street, N.W.
Holder of a Retailer's Class "C" License No. 4261
Application No. 3252

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing this 19th day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant and witnesses

who testified on behalf of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That Daniel T. Long presently has a Retailer's Class "C" license at 823 - 14th Street, N.W.

(2) That applicant has had a license of a similar class at these same premises since February 1, 1938. That this licensee now wishes to renew his Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and has paid the fee therefor.

(3) That various business people in the neighborhood voiced objection to the issuance of this license, asserting that the applicant's patrons contributed to the generally adverse and unpleasant conditions existing in the area. No probative evidence, however, was presented by the above witnesses that said licensee's patrons did in fact contribute to the said conditions.

(4) No remonstrant at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were police matters and not subject to the jurisdiction of this Board.

(5) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the police testified that they had made numerous visits to the premises at various hours throughout the license year, 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percent of these cases, visits were made by the police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M., and that the police did not at any time undertake to go into the kitchen of the licensed premises to see what facilities were

on hand for the preparation of meals or what stocks of food were on hand for that purpose. In addition to testimony by the several police officers, the Board accepted in evidence reports to the precinct captain, showing the dates and times the several police officers visited the premises, and a summary of what they observed. The testimony of the police and the documentary evidence submitted by them has been considered carefully by this Board. Since this business has been in continuous existence since 1938, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards. The Board finds that the evidence is not of sufficient weight to cause it to conclude this is not a bona fide restaurant within the purview of Section 3(n) of the Act.

(6) The Board therefore finds that 823 - 14th Street, N.W., is intended to be and is a bona fide restaurant within the purview of Section 3(n) of the Alcoholic Beverage Control Act, and is in fact a proper place for which a license of this class may issue.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 27th day of January, 1959, that premises 823 - 14th Street, N.W., is appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 3252
Jan. 27, 1959
aro

PLAINTIFF'S EXHIBIT NO. 14

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Benjamin Mendelson
T/A Benny's Tavern
Applicant for the Renewal of a Retailer's Class
"C" license No. 6404 at premises
829 - 14th Street, N.W.
Application No. 5500

FINDING OF FACT

The above entitled application, having been protested came on before the Alcoholic Beverage Control Board for public hearing on January 21, 1959, at 10:30 A.M. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant and witnesses who testified on behalf of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That Benjamin Mendelson, trading as Benny's Tavern, has a Retailer's Class "C" license at 829 - 14th Street, N.W.

(2) That the applicant has had a license of a similar class at these same premises since February 1, 1946.

(3) That the licensee now wishes to renew his Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and has paid the fee therefor.

(4) That various business people in the neighborhood voiced objection to the issuance of this license, asserting that the applicant's patrons contributed to the generally adverse and unpleasant conditions existing in the area. No probative evidence, however, was presented by the above witnesses that said licensee's patrons did, in fact, contribute to the said conditions.

(5) No remonstrant at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the

applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were Police matters and not subject to the jurisdiction of this Board.

(6) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. Two of the officers testifying stated that they had been in the kitchen at the licensed premises, that they observed the equipment but did not investigate the stock of food available.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain, showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(7) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1946, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, After weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 829 - 14th Street, N.W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 5500
Jan. 29, 1959
aro

PLAINTIFF'S EXHIBIT NO. 15**BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA**

IN RE: Sea Bright, Inc.
 t/a Corral Cafe
 Applicant for a Retail Class "C"
 License at premises
 3267 M Street, N. W.
 Application No. 7212

FINDING OF FACT AND CONCLUSIONS OF LAW

The above license application, having been protested, came on before the Board for public hearing on January 29, 1965 at 10:00 a.m., the time set by the Board for remonstrants to be heard in accordance with Section 14(b) of the Act.

The applicant corporation was represented by James F. O'Donnell, Esquire and the protestants, largely members of the Citizens Association of Georgetown, were represented by William Greer, Esquire.

The Board had heard extensive testimony concerning the applicant's premises and operation during the course of a hearing on January 27, 1965 relating to an application by the President of this corporation for Chateaubriand, Inc. at 3207 M Street, N. W. Because the protestants planned to present virtually identical testimony against the renewal of this application, they agreed, through Counsel, to stipulate that the record of the January 27 hearing on the Chateaubriand, Inc. application should stand as the record in the Sea Bright, Inc. hearing so far as the testimony relating to Sea Bright, Inc. is concerned. Counsel for the applicant concurred in this stipulation. Therefore, no testimony was presented by either party.

The protestants' testimony focused on the alleged deterioration of the neighborhood over the past two years resulting from a considerable increase in the number of licensed establishments in the 3200 block of M Street, N.W. Three residents living in close proximity to the alley behind the Sea Bright premises and the owner of an adjacent building testified to serious problems of noise, parking, vandalism, urinating in public,

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, After weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 829 - 14th Street, N.W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 5500
Jan. 29, 1959
aro

PLAINTIFF'S EXHIBIT NO. 15

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Sea Bright, Inc.
t/a Corral Cafe
Applicant for a Retail Class "C"
License at premises
3267 M Street, N. W.
Application No. 7212

FINDING OF FACT AND CONCLUSIONS OF LAW

The above license application, having been protested, came on before the Board for public hearing on January 29, 1965 at 10:00 a.m., the time set by the Board for remonstrants to be heard in accordance with Section 14(b) of the Act.

The applicant corporation was represented by James F. O'Donnell, Esquire and the protestants, largely members of the Citizens Association of Georgetown, were represented by William Greer, Esquire.

The Board had heard extensive testimony concerning the applicant's premises and operation during the course of a hearing on January 27, 1965 relating to an application by the President of this corporation for Chateaubriand, Inc. at 3207 M Street, N. W. Because the protestants planned to present virtually identical testimony against the renewal of this application, they agreed, through Counsel, to stipulate that the record of the January 27 hearing on the Chateaubriand, Inc. application should stand as the record in the Sea Bright, Inc. hearing so far as the testimony relating to Sea Bright, Inc. is concerned. Counsel for the applicant concurred in this stipulation. Therefore, no testimony was presented by either party.

The protestants' testimony focused on the alleged deterioration of the neighborhood over the past two years resulting from a considerable increase in the number of licensed establishments in the 3200 block of M Street, N.W. Three residents living in close proximity to the alley behind the Sea Bright premises and the owner of an adjacent building testified to serious problems of noise, parking, vandalism, urinating in public,

obscenity and fighting which accompany the departure of youthful patrons from some of the licensed establishments, especially on Fridays and Saturdays. Photographs were introduced illustrating the bad trash situation in the alley. The adjoining property owner reported an increasing problem of finding commercial tenants other than restaurants. A police officer submitted reports for the year 1964 showing 29 calls resulting in 16 arrests, largely for disorderly conduct, and an additional 18 arrests for urinating in public within the 3200 block of M Street, N.W. He indicated that this situation is unusually severe for Georgetown.

The applicant presented testimony concerning the marked improvement in the premises, clientele and atmosphere of his establishment since the license was transferred to him two years ago. This was confirmed by a veteran police sergeant of the 7th Precinct. The police frequently visit 3267 M Street, N. W., which is known as the Corral Cafe, but reported no arrests on the premises. The sergeant indicated that when the trash problem in the alley was called to the attention of the abutting licensees, (The French Quarter and Corral Cafe) the owner of the Corral Cafe was prompt to cooperate in improving the situation. Protestants, however, maintain that the trash problem remains serious.

The Chief Inspector of the Alcoholic Beverage Control Board testified to the several reports made by a number of the Board's inspectors during the last year. Most of these reports indicated the Corral Cafe to be operating in an orderly fashion.

The applicant indicated that he has received no complaints from the neighbors about his operation and expressed his desire to cooperate with the neighborhood as much as possible. He testified that the caliber of people frequenting licensed establishments in this area of M Street generally has improved considerably, although he himself has complaints about misbehavior in the area.

The bulk of the protestants' testimony and exhibits related to a generalized problem prevailing in this section of Georgetown. It is generally agreed that Georgetown establishments, whether they be

restaurants or antique shops, serve a wider area and larger population than the inhabitants of this locality. The problems complained of, which result from the patronage of some of the Georgetown licensed establishments by large numbers of young people, are essentially police matters. To date, the police authorities have apparently not found these problems of such magnitude as to persuade them to give a negative recommendation to the Alcoholic Beverage Control Board on this or any other recent license application. The Alcoholic Beverage Control Board is, of course, deeply concerned about the welfare of residents as well as licensees but in this case believes that very little of the testimony relates directly to the applicant and his premises.

Having carefully considered all of the evidence, exhibits and testimony presented at the Chateaubriand, Inc. hearing, as it pertains to this application, the Board FINDS that:

- (1) The requirements of Section 14(a) 1, 2 and 3 have been met.
- (2) Section 14(c) does not apply inasmuch as this is a renewal application.
- (3) Inasmuch as the protest testimony did not offer sufficient evidence against the applicant's operation, and taking into consideration the rights attendant upon an existing license, the provisions of Section 14(a) 5 of the Act are deemed to have been met.

CONCLUSIONS

WHEREFORE, the above premises considered, the Board FINDS this 29th day of January, 1965 that the premises 3267 M Street, N. W. is appropriate and a re-issuance of the same shall and is hereby GRANTED.

ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF
COLUMBIA

/s/ Joy R. Simonson

/s/ James G. Tyson

PLAINTIFF'S EXHIBIT NO. 16BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: K Street Restaurant, Inc.
T/A The Players Club
933-35 5th Street N.W.
Holder of a Retailer's Class "C" license
Application No. 1484

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing on the 28th day of January 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the applicant, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That K Street Restaurant, Inc., trading as the Players Club, presently has a Retailer's Class "C" license at 933-35 5th Street, N.W.

(2) That applicant has had a license of a similar class at the same premises since June 28, 1951. However, a license of this class has been in effect at these premises since October 17, 1950. That the present licensee, and applicant herein, now wishes to renew its Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and has filed the appropriate application and paid the fee therefor.

(3) No remonstrants at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were police matters and not subject to the jurisdiction of this Board.

(4) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. Several of the officers stated that they had been in the kitchen. They further testified that while they had on occasions, observed food being served, the occasions were infrequent. Further, the officers did not at any time determine the amount of prepared and unprepared food on the premises and available.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain showing the dates and times the several Police officers visited the premises, and a summary of what they observed. The testimony of the Police and the documentary evidence submitted by them has been considered carefully by this Board.

(6) The Board finds that the applicant has a suitable space in a suitable building which is kept, used, maintained, advertised or held out to the public to be a place where meals are served; that such space has been provided with adequate kitchen and dining room equipment and applicant has employed therein employees for preparing, cooking, and for serving meals for its guests. Since this business has been in continuous existence since 1951, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards.

The Board finds further that while the evidence as adduced does not justify a denial of the issuance of the license sought to be obtained, much of the testimony adduced tended to show a diminishing of such effort as to conform with the intent required under the provisions of Section 3(n) of the Act and that the continued diminution of effort could adversely effect and jeopardize the continuation of this license.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 933-35 5th Street N.W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

App. No. 1484

dla

January 29, 1959

PLAINTIFF'S EXHIBIT NO. 17BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: L & H Inc.
T/A Blue Mirror Restaurant
Applicant for the Renewal of a Retailer's
Class "C" License No. 8601 at premises
824 - 14th Street, N. W.
Application No. 6929

FINDING OF FACT

The above entitled application, having been protested, came on before the Alcoholic Beverage Control Board for public hearing on the 21st day of January, 1959. After taking the testimony of all witnesses remonstrating the issuance of this license, and of the President of applicant corporation, and after consideration of the entire testimony and all documentary evidence submitted, it is found:

(1) That L & H Inc., trading as the Blue Mirror Restaurant, presently has a Retailer's Class "C" license at 824 - 14th Street, N. W.

(2) That applicant has had a license of a similar class at the same premises since June 24, 1952. However, a license of this class has been in effect at these premises since October 30, 1936. That the present licensee, and applicant herein, now wishes to renew its Class "C" beverage license for the year beginning February 1, 1959, and ending January 31, 1960, and had filed the appropriate application and paid the fee therefor.

(3) No remonstrants at any time questioned the good moral character of the applicant. All testimony adduced tended to indicate that the applicant was of excellent character. The Board finds that the principal matters complained of by the remonstrants were Police matters and not subject to the jurisdiction of this Board.

(4) Members of the Metropolitan Police Department, including the Commanding Officer of No. 1 Precinct, remonstrated against the issuance of this license and testified that in their opinion the applicant's premises

is not a bona fide restaurant under the provisions of Section 3(n) of the Alcoholic Beverage Control Act. In support of their opinions, the Police testified that they made numerous visits to the premises at various hours throughout the license year 1958, and testified that on only a few occasions did they observe that food was being served and consumed by patrons. The testimony disclosed that in a high percentage of these cases, visits were made by the Police between the hours of 10:00 o'clock P.M. and 2:00 o'clock A.M. However, no particular effort was made to determine the amount of food on hand or the amount of unprepared food on hand.

In addition to testimony by the several Police officers, the Board accepted in evidence reports to the Precinct Captain, showing the dates and times the several Police officers visited the premises, and a summary of what they observed. In this connection, it must be observed that several of the Police officers who were assigned to this particular area testified that not only had they observed patrons eating and being served food, but they themselves had been served and consumed food there on occasions. The testimony of the Police and the documentary evidence submitted by them has been carefully considered by this Board.

(5) The Board finds that the evidence as adduced by the witnesses and other cogent evidence does not support a finding that this is not a bona fide restaurant, but clearly supports the fact that it is a bona fide restaurant.

CONCLUSION

WHEREFORE, after weighing all of the above, as required by Section 14 of the Act, it is the Finding of the Board, this 29th day of January, 1959, that premises 824 - 14th Street, N. W., IS appropriate for the license desired, and the same may issue if and when the applicant complies with the requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL BOARD
OF THE DISTRICT OF COLUMBIA

/s/ Frank E. Weakly
/s/ James G. Tyson
/s/ Richard C. Sullivan

Appl. No. 6929
gmh

PLAINTIFF'S EXHIBIT NO. 18

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: John Bryant Ellis
T/A Ellis' Seafood Restaurant
Applicant for the 1962 Renewal of a Retailer's
Class "D" License No. W238 at premises
2277 Savannah Street, S. E.
Application No. 8633

FINDING OF FACT

The above-named application, having been protested, came on before the Board for public hearing Wednesday, January 31, 1962. Four persons testified in opposition to the granting of the license. The principal objections were stated by the Vice President of the Garfield-Douglas Heights Civic Association. One petition containing the names of persons alleged to reside in the area was received. Also received were some form letters in opposition, signed by various persons. The applicant testified in his own behalf. The said objections were largely opposed to any Alcoholic Beverage Control license at this location, alleging that undesirable persons were thereby attracted to the neighborhood causing traffic difficulties, downgrading the area and lowering the value of property and other undesirable conditions.

After considering all the above, the Board finds:

- (1) That the applicant seeks to renew his retail class "D" license for 1962 at premises 2277 Savannah Street, S.E.
- (2) That there have been no charges of any kind filed against the applicant since the license was issued to him in January 1961.
- (3) That while all the said testimony and objections as stated at the hearing have been carefully considered, the evidence adduced is insufficient to deny the renewal of the said license, and that to issue it does not violate the provisions of Section 14(a)5 of the Act.

CONCLUSION

WHEREFORE, in the light of the above, it is the finding of the Board this 1st day of February, 1962, that premises 2277 Savannah Street, S.E., is appropriate for the license desired, and that since applicant has met the requirements of this and other municipal agencies the license may issue.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

App. #8633
Feb. 1, 1962
cew

PLAINTIFF'S EXHIBIT NO. 19

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: George Koskouras
T/A Riggs Delicatessen
Applicant for the Renewal of a Retailer's
Class "D" License
No. 5466 at premises 1501 P Street, N.W.
Application No. 1410

FINDING OF FACT

The above named application, having been protested, came on before the Board for Public Hearing January 12, 1959. Testimony was presented by representatives of St. Luke's Episcopal Church, and Council of Churches National Capital Area, protestants; and other witnesses for the applicant. After consideration of all the testimony, and all other matters pertaining thereto required under the Act and Regulations, it is found:

(1) That the applicant now is the holder of a Class "D" license at 1501 P Street, N.W.

(2) That the applicant, either in association with others or as an individual, has had a Class "D" license at 1501 P St., N.W., since 1942.

(3) That during the 1958 license year no complaints as to the conduct of the business have been filed with the Board.

(4) That while the premises is within the prohibited distance, Section 3(a) of the Regulations is not herein applicable, in that a "D" licensee has regularly been issued a license at this address since 1934 and at a time when this type of license was not prohibited by the regulations then and there being.

(5) That the matter of the public interest, and the testimony in objection offered by witnesses for and in behalf of the Churches has been given the most careful consideration; however, such matter is not a bar within the purview of the A.B.C. Act or Regulations.

(6) That the Board concludes the specific evidence tendered by protesting witnesses in support of their claims was in the nature of opinions reflecting public interest rather than statements of facts upon which the Board may make a determination, and that the testimony adduced is not of sufficient weight to justify the denial of this application for renewal.

CONCLUSION

WHEREFORE, After considering all of the above, it is the Finding of the Board this 16th day of January, 1959, that premises 1501 P Street, N.W., is appropriate for the license desired, and the same may issue if and when the applicant complies with all requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly
/s/ James G. Tyson
/s/ Richard C. Sullivan

Appl. No. 1410
Jan. 16, 1959
aro

PLAINTIFF'S EXHIBIT NO. 20BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: MacArthur Liquors, Inc.
T/A MacArthur Beverages
Applicant for the Renewal of a Retailer's
Class "A" License No. 9740 at premises
4881 MacArthur Boulevard, N. W.
Application No. 211

FINDING OF FACT

The above-named application, having been protested, came on before the Board for public hearing on December 10, 1958.

Preliminary to presentation of evidence, Counsel for the Protestant Palisades Citizens Association, Inc., read into the record a letter of protest by the said Association under date of December 4, 1958, and signed by J. W. Anderson, President, noting a protest on behalf of the Association, particularly those living within a 600-foot radius and requesting consideration in support of said protest, the motions, petitions, letters, and testimony of the opponents of the application for license at 5136 and the transfer to 4881, and that hearing on this application be continued until after the decision of the Court of Appeals in cases pending there, and until the Board shall have prescribed Rules and Regulations required by Section 14(a)5 of the Alcoholic Beverage Control Act. Counsel also read into the record the reply to said letter by the Board, who wrote the protestant, as follows:

"Your letter of December 4, 1958, was received today and the contents duly noted.

"Under the law, all current alcoholic beverage licenses expire at Midnight, January 31, 1959. With the information available to it, the Board regrets it is unable to consider the postponement of the roll call date, December 10, 1958, for MacArthur Liquors, Inc., 4881 MacArthur Boulevard, N.W.

"Since this is not a hearing on an application at 5136 MacArthur Boulevard, N. W., nor on a transfer to 4881 MacArthur Boulevard, N. W., your requests must be and are denied.

"We have noted your protest for roll call and hearing on December 10, 1958."

Counsel then orally moved the Board substantially in compliance with the points in the letter sent to the Board under said date for the Palisades Citizens Association, Inc., and three citizens enlarging to some extent and pointing out in more detail the principal points referred to.

Counsel's Motion was denied upon substantially the same reasons set out in the answer to Protestant's letter hereinbefore set out, including the fact that Rules and Regulations exist, in fact, and have existed since October 15, 1938.

Upon being advised that the Board would consider said letter as a protest to the re-issuance of this matter on behalf of the Association, Counsel noted that certain protestants present would simply stand, state their address, indicate whether they owned their property, and would announce that they oppose the re-issuance or renewal of the license herein applied for and 13 protestants living in the neighborhood did so.

Testimony was adduced by the Minister of the Community Church on behalf of the Church as a resident protestant. This witness was thoroughly examined and cross-examined.

The applicant testified orally in his own behalf and offered six letters favoring, and some 57 pages of petitions containing names of 723 persons alleged to reside and/or owning property within a radius of four blocks of the premises 4881 MacArthur Boulevard, in favor of granting the license. It was further stated that while at 4881 MacArthur Boulevard, its business had increased fifty percent over its volume at 5136 MacArthur Boulevard, indicating thereby local acceptance by persons residing and/or owning property in the area.

No evidence was presented showing, or tending to show, that the applicant licensee has violated any laws since the license was transferred

to 4881 MacArthur Boulevard in 1958, nor that the licensee is otherwise an improper "person," within the purview of the Act.

Section 14(c) of the Act is not applicable in this case.

CONCLUSION

WHEREFORE, having considered all of the above, it is the Finding of the Board, this 29th day of December, 1958, that premises 4881 MacArthur Boulevard, N. W., IS appropriate for the license desired, and the same is approved, and may be issued if and when the applicant has complied with all requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

/s/ Richard C. Sullivan

Appl. No. 211
gmh

PLAINTIFF'S EXHIBIT NO. 21

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Albert Pearlman
T/A D-D Liquors
4173 Minnesota Ave., N.E.
Holder of a Retailer's License Class "A"
Application No. 671

FINDING OF FACT

The above named application, having been protested, came on for public hearing before the Board on the roll call date, January 5, 1959.

Attorney Kligman, representing the protestants, stated he wished to file only a "technical" objection. He called the Board's attention to the fact that a certain deed of trust recorded July 1, 1908, contained a covenant that no alcoholic beverages were permitted to be sold at the

premises 4173 Minnesota Avenue, N.E., and submitted photostatic copy thereof to the Board.

The matter of the covenant was not an issue at the time of the hearing when the protest on the original application was heard. Nor was any reference to it, or testimony thereon, presented at that hearing. It must be presumed that there was a waiver of the provisions of the covenant by the protestants at the original hearing.

No other testimony was received, nor witnesses appeared in objection.

After considering the above, it is the Finding of the Board, this 9th day of January, 1959:

(1) That the applicant, Albert Pearlman, now has a License Class "A" at premises 4173 Minnesota Ave., N.E.

(2) That said licensee seeks to renew his license for the year February 1, 1959, to January 31, 1960.

(3) That the premises was properly placarded as required by law.

(4) That there have been no charges of violation of the laws by the applicant.

(5) That said license is now on file with the Board, pending completion of certain alterations of the premises.

(6) Conceding that the covenant above referred to, if still in effect, is an issue to be decided by the Courts, it should be noted that part of said covenant is by Decision of the U. S. Supreme Court no longer valid. The way the instrument is drawn it may be that the entire covenant is invalid. If this be correct, then the whole matter is moot.

CONCLUSION

WHEREFORE, after considering the above, it is the Finding of the Board, this 9th day of January 1959, that premises 4173 Minnesota Ave., N.E., is appropriate for the license desired and the same may issue if

and when the applicant complies with all requirements of this and other municipal agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

Jan. 9, 1959
Appl. No. 671
aro

/s/ Frank E. Weakly
/s/ James G. Tyson

PLAINTIFF'S EXHIBIT NO. 22

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Prajo, Inc.
t/a Channel House
Applicant for a Retailer's Class "C"
License at premises
824 New Hampshire Avenue, N.W.
Application No. 8821

FINDING OF FACT AND CONCLUSIONS OF LAW

The above-named application having been protested, came on before the Board for public hearing on December 30, 1964 at 10:00 a.m. Present on behalf of the applicant corporation licensee were Henry Prati, Secretary-Treasurer and Robert J. D. Johnson, Vice President. Norman Glasgow, Esquire and Allen Jones, Esquire represented the applicant. Testifying in favor of the application were J. Hampton Baumgartner, Logan G. Manders and Theodore Bambacus. On behalf of the protestants were certain members of the Foggy Bottom Association consisting of William L. Simon, Norman Frumpkin, Ann Goodwin, Beatrice Wilgus, and Alexander E. Wiskup, the latter acting as spokesman for the group.

At the hearing all persons were given an opportunity to testify, present petitions, exhibits, letters and all matters pertinent to the hearing.

The applicant introduced evidence through its witnesses, J. Hampton Baumgartner, as to the number of persons residing in the area, as previously delineated by the Board, from the last census taken in 1960. Exhibits were introduced which showed that 9,176 persons resided in the area of which 8,102 were over 21 years of age and only 1,164 under said age. Also, of 5,695 housing units located therein, 436 were owner occupied, 4,906 rented and approximately 200 units were not occupied. Further, testimony by the applicant established the fact that the restaurant facility cost in excess of \$70,000, that the premises, the apartment hotel had 34 hotel units, therefore qualifying and receiving a hotel license. Principal objections appeared to be based on the fact that the neighborhood has deteriorated from the "quiet residential" area that it was prior to the Channel House receiving its initial license; that parking in the area has become intolerable because of the license and that patrons of the restaurant are loud and boisterous upon leaving the restaurant in the early hours of the morning. The protestants stated that while a restaurant without a license would not be objectionable to them, one with a license is highly objectionable because of the occurrences hereinabove referred to. Testimony by the protestants further revealed that other high-rise apartments and/or motels had been constructed in the neighborhood or are in the process of being constructed in the area. No testimony whatsoever was adduced showing that there has been any devaluation of property in the area. In fact one of the witnesses for the protestants, Miss Ann Goodwin, stated that she could not live in the neighborhood because of the high taxes, also she was unable to find adequate parking and could not afford to pay for parking space.

The records of this Board do not reveal that any complaints have been received by it from other area residents or from the police respecting the licensed premises.

In her testimony, Mrs. Wilgus testified that she has "solicited" signatures from persons residing near the Channel House Hotel. These number 67, not 73 because several of them had signed "Mr. and Mrs."

Notwithstanding the fact that Mrs. Wilgus submitted a sworn statement that the signatures given were genuine and signed in the handwriting of the person whose name appeared thereon, the Board accepted the same for consideration. Mrs. Wilgus further complained that the noise and the type of people who were patrons of the restaurant, which disturbed her rest. Mrs. Ann Goodwin, who owns the houses located at 816 and 830 New Hampshire Avenue, N. W., likewise testified as to the noise emanating from the patrons who frequent the Channel House upon their leaving. She stated that she was advised of this by her tenants. She now lives at 90004 Sudbury Road, Silver Spring, Maryland.

The other witnesses, Messrs. Frumpkin and Simon, testified in the same vein, namely, concerning the noise of the patrons and their loud and boisterous conduct and the parking difficulties. However, Mr. Simon did concede that on his visit to the restaurant for a noonday meal he found same to be of a high class type or words to that effect.

At the close of the hearing, Mr. Wiskup requested and was granted leave by the Board to submit a Memorandum of Position of the Foggy Bottom Association which has been submitted and the same is a part of the file in this case.

By way of background, this license in question was originally approved on the 21st day of June, 1962 after a protest hearing held on the 11th day of June, 1962. It is fair to say that the persons who appeared here have likewise opposed this application from its inception and further opposed the erection of the Channel House Apartment. Extensive construction was undertaken by the management of the hotel as well as the applicant to meet the requirements of this Board and other agencies of the District of Columbia and the license was issued on the 28th day of December, 1962. Another application was filed and this likewise was protested on January 28, 1963 and again granted over the opposition of the Foggy Bottom Association. The following year the application was not protested. This license, therefore, has been in effect since the 28th day of December, 1962 to the present time. The Board, charged by law,

in its previous findings satisfied itself that the applicant met all of the requirements of Section 14(a) 1, 2, 3 and 4 of the Act; that Section 14(b) of the Act was complied with (pertaining to notice that the remonstrants can protest and the place and time of hearing) and that Section 14(c) does not apply in this instance inasmuch as this license is currently in effect. Further, the Board satisfied itself that the requirements of Section 3(j) of the Act were met. Therefore, after reviewing the entire evidence, the Board finds no reason to change its past decisions and is restricting the same to the provisions of Section 14(a) 5 of the Act, viz:

"That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired,"

as of this time and its decision must be based thereon.

It was conceded at the hearing and is a matter of public record that the zoning of the subject property is R-5-D. This zoning classification, as a matter of right, permits the highest density, maximum height and most intensified use of the residential zoning classifications and likewise the erection of a hotel is allowable.

After a study of the evidence submitted including the population of the area and of the number and kinds of housing units involved, the record of the conduct of the business during the past license year as revealed by the police report and other relevant evidence received for and against the issuance of this license, it is found by the Board this 27th day of January, 1965 as follows:

That the license herein currently in effect, application for which is now pending, was first issued on the 28th day of December, 1962 and has been in continuous use since said date. That the character of the premises and its surroundings for which the license is desired is an appropriate one. That the provisions of Section 14(c) of the Act and Section 2-103 of the Regulations do not apply.

WHEREFORE, the above premises considered, the Board FINDS this 27th day of January, 1965, that the premises 824 New Hampshire Avenue, N. W. is appropriate for the license desired and a renewal of the same shall be and is hereby GRANTED.

ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF
COLUMBIA

/s/ James G. Tyson

/s/ Louis N. Nickel

#8821

PLAINTIFF'S EXHIBIT NO. 23

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Bernard Schulman
T/A Deanwood Market
4515 Sheriff Road, N.E.
Holder of a Retailer's License Class "B"
Application No. 1419

FINDING OF FACT

The above named application, having been protested, came on before the Board for public hearing on the date of Roll Call January 7, 1959.

When the case was called up, no witnesses either for or against appeared. The sole protestant, the Randall Memorial Methodist Church, 1002 Browning Place, N.E., filed a letter over the signature of its Pastor in objection.

The Board is entirely sympathetic with the Church regarding conditions complained of in the neighborhood, and in no sense condones them. The fact remains no adverse charges have been made against said licensee.

After careful consideration of the Church's letter, the Board finds:

- (1) That said licensee, Bernard Schulman, has had a Class "B" License at premises 4515 Sheriff Road, N.E., since October 31, 1951.
- (2) That he now desires to renew his license for the year February 1, 1959, to January 31, 1960, inclusive.
- (3) That there have been no charges for violations of the law against him during the time he has had his A.B.C. license.
- (4) That to grant the renewal of said license would be entirely consistent with the requirements of Section 14(a)5 of the Act.

CONCLUSION

Wherefore, after considering all of the above, it is the Finding of the Board, this 9th day of January, 1959, that premises 4515 Sheriff Road, N.E., is appropriate for the license desired, and the same may issue if and when the applicant complies with all requirements of this and other municipal agencies.

ALCOHOLIC BEVERAGE CONTROL
BOARD OF THE DISTRICT OF
COLUMBIA

/s/ Frank E. Weakly

/s/ James G. Tyson

Appl. No. 1419
Jan. 9, 1959
aro

PLAINTIFF'S EXHIBIT NO. 24BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Wagshal's Delicatessen & Liquors, Inc.
T/A Wagshal's Delicatessen & Liquors
Applicants for the transfer renewal of a
Retailer's Class "A" license at premises
4855 Massachusetts Avenue, N.W.
Application No. 380

FINDING OF FACT AND CONCLUSION OF LAW

The above-named application, having been protested, came on before the Board for public hearing January 7, 1960 and January 13, 1960. Various persons testified against the issuance of this license. The applicant testified in his own behalf. All were accorded full opportunity to express their views, present petitions, exhibits, and all material related to the hearing. Testimony in objection dwelt upon alleged adverse effects the proposed license would have on the neighborhood, adequacy of service, and general personal dislike for the applicant.

After consideration of all the above, the Board finds that:

- (1) The applicant was granted a Retail "A" license at the above premises September 15, 1959.
- (2) The applicant has operated a food shop and delicatessen at the above address for many years.
- (3) Since the applicant received its license there have been no violations of the ABC Act reported against him.
- (4) The applicant seeks a renewal of his license for February 1, 1960 to January 31, 1961, and wishes to change the ownership to a corporation with the applicant and his family becoming owners and officers of the new corporation. Samuel Wagshal, a 75% owner as a licensee, remains a 75% stockholder and President of the corporation.
- (5) The applicant, since receiving his license in September 1959, has invested approximately \$75,000 to rehabilitate the structure, and by virtue of the provisions of the rental agreement has accepted a \$100.00

monthly increase in rent for the balance of the period the lease is to run or for a period of 8 years.

(6) That while protestant's testimony dwelt largely on the possible adverse effects upon the community, contending as well, a sufficiency of service, and indicating certain personal dislikes for the applicant, the Board finds that said testimony is not of sufficient weight to justify the denial of said license.

(7) The said premises is not barred by virtue of the provisions of Section 2-103 of the ABC regulations.

(8) Section 14(c) of the Act is not applicable since a license is presently in existence.

(9) Rule 2.6 of the ABC Board's rules of procedure is not violated in the manner of acceptance of protest and consent petitions.

(10) Rule 2.1 of the ABC Board's rules of procedure is not violated because of the absence of neighborhood delineated by the Board.

(11) The Board's rules are adequate and sufficient to govern this hearing under Section 14(b) of the Act.

(12) Consideration has been given to the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is sought, as well as all provisions of Section 14 of the Act.

CONCLUSION

WHEREFORE, it is the Finding of the Board, this 21st day of January, 1960, that premises 4855 Massachusetts Avenue, N.W., is appropriate for the license desired, and the same may issue when the applicant complies with all requirements of this and other Municipal Agencies.

ALCOHOLIC BEVERAGE CONTROL BOARD OF THE DISTRICT OF COLUMBIA

/s/ Frank E. Weakly
/s/ James G. Tyson
/s/ Richard C. Sullivan

Appl. No. 380
January 21, 1960
wht

PLAINTIFF'S EXHIBIT NO. 27THE CITIZENS ASSOCIATION OF GEORGETOWN
EXECUTIVE COMMITTEE MEETING

Friday, July 2, 1965

The meeting of the Executive Committee was called to order by President Belin at 5:12 P.M. in the Governors Room at the City Tavern. Members present, in addition to the President, were:

Philip M. Bonsal, V.P.
Gardner Palmer, V.P.
Louis A. Traxel
Mrs. H. B. Hinton
J. B. Wyckoff, Secty.

Miss Mary Faith Wilson, Chairman of the Committee on Public Relations, attended as an observer, and William H. Greer, Jr., the Association's council, also was present.

Liquor Licenses

Mr. Bonsal reported a recent meeting of the Committee on Licenses which was called by Norborne Robinson in the absence from the city of Chairman Philip Robinson, to consider the action on June 25 of the Alcoholic Control Board on the applications of the Steak Pitt at 3308 M St. and the Cafe Balzac at 1614 Wisconsin Ave. for liquor licenses.

The Steak Pitt application was approved by the Board, and the Cafe Balzac application was denied. Represented by Mr. Greer at the hearings, CAG protested both applications.

Of the 3-member ABC Board, it was noted, Mrs. Simonson, Chairman of the Board, voted for denial in both cases; Mr. Tyson voted for approval in both cases, and Mr. Nichols in one case voted for approval and in one for denial.

A discussion followed of Mrs. Simonson's recent recommendations for revision of the liquor license regulations, and the President agreed to ask the Committee on Licenses to study the recommendations and to submit its proposals to the Executive Committee. A general feeling was

expressed that Mrs. Simonson should be advised of the interest of the Association in this matter.

Mr. Bonsal reported that a group of citizens, represented by Mrs. Rendle, is being organized to bring suit in the courts for the withdrawal of certain M Street Liquor licenses.

On motion of Mr. Traxal it was unanimously resolved by the Executive Committee that:

1. The Citizens Association of Georgetown will appeal to the Federal District Court the issuance of a liquor license to the Georgetown Steak Pitt, Inc.
2. Should the denial of a liquor license to Cafe Balzac, Inc. be appealed, the Citizens Association of Georgetown will request permission of court to appear as friend of the court to support the Alcoholic Control Board action in denying the license, and
3. The Citizens Association of Georgetown will oppose any new applications for liquor licenses in the Georgetown area if in the judgment of the President such applications should be opposed, until the next regular meeting of the Association.

The President stated that, during the Summer absence of Philip K. Robinson, Paul Chadwell will act as Chairman of the Committee on Licenses assisted by Messrs. Bonsal and Palmer.

Baptist Home

Mrs. Hinton, as Chairman of the Committee on Zoning, reported that a realtor is remodeling the Baptist Home building located on N Street between Wisconsin and Potomac to become a rooming house with accommodations for 40 people. Since the former occupant had no occupancy permit, Mr. Greer has asked the D.C. License Officer to check the accuracy of the new application which states that the building was a rooming house. Mrs. Hinton requested authority to appeal to the Board of Zoning

Adjustment if the rooming house license is issued, asking that such permit be rescinded. The applicant has been given permission to remodel the building for 10 or 12 apartments, which Mrs. Hinton considers a more acceptable use than as a rooming house for 40 people. Approval was voted for the authority requested by Mrs. Hinton.

Mailing List

Mr. Noel Macy of the Committee for the Preservation of Georgetown asked by letter for a copy of the Association's mailing list so that he might check it against his list. Since this would establish an undesirable precedent, his request was not approved. However, Miss Wilson volunteered to do the required checking at our printers, and hopefully get the result desired by Mr. Macy.

A change in the starting time of Association meetings from 8 to 8:30 P.M. was discussed. It was decided to leave the decision to the membership.

The President stated that during his absence July 7 through July 26 Vice President Bonsal will be Acting President.

The meeting adjourned at 6:45 P.M.

/s/ J. B. Wyckoff
Secretary

PLAINTIFF'S EXHIBIT NO. 28

THE CITIZENS ASSOCIATION OF GEORGETOWN
EXECUTIVE COMMITTEE MEETING

Wed., June 2, 1965

The meeting of the Executive Committee was called to order by Pres. Belin at 5:38 P.M. in the Governor's Room at The City Tavern. Members present, in addition to the President, were:

Gardner Palmer, 2nd V. P.
Louis A. Traxel, Past Pres.
Philip K. Robinson, Past Pres.
Mrs. J. H. Gilbert, Treas.
Allen W. Dulles, Appointee
Frederick S. Hill, Appointee
Mrs. H. B. Hinton, Appointee
J. B. Wyckoff, Secretary

Miss Mary Faith Wilson, Chairman of the Committee on Public Relations, attended as an observer. Vice Presidents Bonsal and Foster were reported to be out of the city.

The President distributed the attached lists of members of the Executive Committee and of Committee Chairmen for the newly elected administration.

The President called attention to having appointed a Nominating Committee, with Frederick M. Bradley as Chairman. The membership should be advised of this change in procedure. Normally this committee is appointed at the end of the year.

The following matters were given consideration:

1. Request of the Boys Club of Greater Washington for an Association letter to support a fund drive for its Summer Camp, Camp Winslow on Chesapeake Bay.

Mr. George Cullen and Mr. Robert Coleman, Exec. V. P., presented the request and made personal appeals. Mr. Cullen stated that, as a result of a letter sent last year to our membership at no cost to us, \$2700 was received and 50 boys, ages 8 through 13, went to camp for 2 weeks. He proposed that a similar letter, draft attached, be sent

this year. In the questioning that followed it was learned that few of the grants go to Georgetown boys and none went to negroes last year. We were assured that some colored boys will be sent this year.

On motion of Mrs. Gilbert it was unanimously voted that we continue this exception to the rule which restricts the use of our mailing list. The President was thereby authorized to send an "informative" letter to our membership, at no cost to the Association.

2. The need for stenographic assistance — particularly at meetings of the Association — was considered. On motion of Mr. Traxel the President was voted authority to engage stenographic assistance as needed by the President and Secretary.

3. The President was authorized to pay \$25 dues to the Federation of Citizens Associations for the coming year.

4. The President was authorized to contract with Christ Church, Georgetown, for the use of its meeting hall monthly, September through May, for \$100. Meetings will be held the second Monday of each month except in April 1966 when we will meet April 18.

5. Mr. Noel Macy, Chairman of a Committee for the Preservation of Georgetown, reported by letter to Capt. Belin a meeting he, Mr. Abe Fortas and Mr. Randolph Burgess had with Father Campbell of Georgetown University regarding the University's announced plan to expand its front campus into the residential area of Georgetown.

As a result of this unsatisfactory meeting, and because of the need to disseminate the full story to Georgetown residents, Mr. Macy's committee has requested the use of our membership list for a letter designed to assemble community-wide assistance.

It was moved by Mr. Hill and seconded by Mrs. Gilbert that Mr. Macy be permitted to send a letter to our membership regarding the preservation of Georgetown, the letter to go over his signature and not using our letterhead.

The meeting adjourned at 7:05 P.M.

/s/ J. B. Wyckoff
Secretary

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Twelve Hundred Restaurant, Inc.,
T/A Harry's Tavern
Applicant for the re-issuance of a Retailer's
Class "C" license at premises
1200 New York Avenue N.W.
Application No. 5717

FINDING OF FACT

The above licensee, having applied for a retailer's license class "C" at the above address for the license year commencing February 1, 1958, was directed to appear before the Board to show cause to the satisfaction of the Board that the Corporation is capable of operating the establishment as required by the laws. This action was taken because a review of the record of operation since the Corporation has had such license indicated failure to operate and manage properly; also, because of adverse report of the Commanding Captain of the Metropolitan Police precinct within which is located the premises. Hearing was had in the matter before the full Board on January 28 and 29, 1958. Various persons testified both favorably and unfavorably to the applicant Corporation. After considering all testimony and evidence, it is found:

(1) That this Corporation has had such a license at the above premises since April 2, 1953, and here applies for a reissuance of license for the year starting February 1;

(2) That examination of the Board's records show that on numerous occasions since April 1953, this licensee has been the subject of numerous police reports alleging violations of the law, as the result of which the said license has been suspended several times; that some reports were not made the subject of citation proceedings because of apparent insufficient evidence; that various cases were dismissed either because principal witnesses failed to appear to testify or because of great conflict or lack of substantiation of charges in the testimony adduced;

(3) That while representatives of the applicant Corporation argued there had been a change in ownership and management since December 1, 1957, and the new management would be able, and intended, to operate this place according to law, it was shown that the alleged new owner and president had worked in the establishment for several years and had actually managed it since June, 1957, over a period during which various infractions were shown to have occurred;

(4) That testimony showed that as late as January 18 and 24, 1958 violations were observed on the premises, the latter date being after this licensee was notified of the pending action; further, the Board's records show that during the pendency of this action an additional report was received from the Metropolitan Police Department alleging service to two minor children aged 16 years;

(5) That the Board is satisfied, from its own records and the evidence laid before it, that this Corporation has failed to carry out in good faith the provisions of the laws; that the officers and/or managers of the establishment have rarely been found in the place during operating hours; that there has been complete lack of proper management and supervision and lack of the due care in operation that is required of such an establishment; that the establishment has been frequented by disorderly persons or those who became disorderly while in the place; that persons under the minimum legal ages have frequented the premises and have been served alcoholic beverages;

(6) As a result of the foregoing concerning specifications set forth in the show-cause letter of January 21, 1958, it is the Finding of the Board that this licensee, over a long period, has failed properly to superintend and operate the licensed premises and has shown its lack of capability of managing the premises in the manner required by the Alcoholic Beverage Control Laws of the District of Columbia.

CONCLUSION

WHEREFORE, in consideration of the foregoing, application of this Corporation for a Retailer's license Class "C" is DENIED this 30th day of January 1958, under the provisions of Section 14 of the Alcoholic Beverage Control Act for the District of Columbia.

It is further ORDERED, that copies of this Finding of Fact be sent to the applicant Corporation, its attorney, and to Robert V. Murray Chief, Metropolitan Police Department.

/s/

/s/ Herbert K. Schollenberger

/s/ Frank E. Weakly

App.#5717

dla

January 30, 1958

BEFORE THE ALCOHOLIC BEVERAGE CONTROL BOARD
IN THE DISTRICT OF COLUMBIA

IN RE: Carber, Inc.
t/a The Roundtable Restaurant
Applicant for a Retailer's Class "C"
License at premises
2813 M Street, N. W.
Application No. 9061

FINDING OF FACT AND CONCLUSION OF LAW

The above application, having been protested, came on before the Alcoholic Beverage Control Board for hearing on January 25, 1966, at 10:00 a.m., in accordance with the placard posted on the premises as required by Section 14(b) of the Act. Testimony was concluded and legal arguments made on January 27, 1966.

The applicant was represented by J. E. Bindeman, Esquire, and Leonard W. Burka, Esquire. The protestants, nine residents of property near 2813 M Street, N.W., were represented by R. Michael Duncan, Esquire, and Robert C. Zimmer, Esquire.

The hearing opened with testimony by Charles F. McGehee of the Zoning Commission that the property in question is in a C-2 commercial zone, near R-3 residential property.

Private James Johnson of the 7th Precinct headed a group of seven (7) police witnesses, all of whom had visited the Roundtable during 1965. They testified, almost uniformly, of having seen no disorder or intoxication inside the Roundtable. They confirmed age-identification checking at the entrance, and a cooperative spirit shown by the management. All of them reported handling complaints regarding youthful misdemeanors in the neighborhood late at night and cases of illegal parking in the vicinity of the Roundtable.

Colonel Robert Wheeler, President, since June, 1965, of the Armed Forces Disciplinary Control Board, testified that the Military Police who visit the Roundtable every night have never made an adverse report on it.

Lieutenant Colonel Alfred Perkins, deputy commander of the Armed Forces Military Police, gave similar testimony.

Two young ladies who live on 28th Street not far from the Roundtable spoke favorably of the restaurant, one as an occasional visitor and the other about not having been disturbed by the night noises.

Riley B. Carter II, one of the two original promoters of the project and Secretary-Treasurer of Carber Corporation said that he and George Berman share equally in its ownership and give it their full time. They leased the property for five (5) years on July 3, 1964. Remodeling cost \$85,000 to \$90,000, of which some \$70,000 is still owed. He said that they planned to operate a supper club which would also serve lunch, and in their license hearing said they wanted to attract an older clientele who spend more money than do teenagers. At their opening on November 25, 1964 musicians playing "rhythm and jazz" provided the entertainment, also a singer. From the start, both day and night trade was small in a restaurant designed for 260 customers. Mr. Carter said that after business had been quite poor for 60 to 90 days, they decided to apply for a public hall license and to appeal to a broader clientele with more varied entertainment. After counsel for the protestants presented a copy of the application for the Public Hall license dated December 15 and issued December 29, 1964, Mr. Carter recollected that the Roundtable had applied for said license in order to be allowed to charge admission on New Year's Eve. From that time on identification age checks were made at the door and an admission charge of 25¢ was made after 8:30 p.m. The admission charge is now 50¢ weekdays and \$1.00 Friday and Saturday nights. To broaden the clientele they hired different bands including some with younger appeal providing music which he described as having a strong, heavy beat and repetitive lyrics.

They corrected the amplification and installed soundproofing to keep the noise from leaving the building. On the question of parking, at the suggestion of their new attorney, who was employed on January 3, 1966, Mr. Carter said he had on the day of the hearing received a note

from the owner about leasing a lot on 29th Street south of N on a month to month basis which upon final agreement is expected to accommodate 100 cars. No program for its use has been developed. He testified specifically regarding toilet facilities in the restaurant, which, it appears, are the same in number as when the place was a drapery shop.

On the question of food he stated that his partner, Mr. Berman, did the cooking in the early days. The kitchen contains no mechanical dishwasher. Food was wasted because of the limited demand for it. They planned to specialize in steaks and roast beef, but no roast beef now appears on the menus, which are kept on the bar and not on the tables. There are possibly 75 tables in the room, he said, most of them quite small, 20 x 20 inches square.

George Berman, President of Carber Inc., and half-owner of the business, testified similarly regarding the starting of the business and the necessity felt by the two owners to enliven the form of entertainment as an economic necessity in order to attract younger people.

Attorney for the protestants here entered on the record Mr. Berman's testimony at a previous hearing before the Alcoholic Beverage Control Board on May 20, 1964.

Q. What type of trade are you seeking to get into this proposed restaurant?

MR. BERMAN: We seek a middle-aged clientele.

Q. I'm going to ask you now a direct question. Do you intend to use this place as a rock and roll place?

MR. BERMAN: No, we do not.

Captain Dan Kennedy of the 7th Precinct presented statistics regarding arrests in the area one block south of M to N Street and 27th to 31st Streets from 6:00 p.m. to 3:00 a.m. There were 68 arrests in 1964, and 84 in 1965, an increase of 23.5%. Captain Kennedy, who has visited the Roundtable three or four times, testified that he believes it contributes to the parking and the complaint problems of the area. He knew that Mr. Carter and his manager had been knifed in front of the

restaurant after 2:00 a.m. on February 20, 1965, when Mr. Carter tried to break up a fight. Both of the applicants had previously in these proceedings denied any knowledge of a fight or knifing in front of the premises. When Captain Kennedy testified on the basis of his officers' report, the applicants thereupon admitted that the fight had occurred at the gas station a few doors away. He also knew of an arrest on August 27, 1965, of patrons of the restaurant who had become disorderly and who started fighting and cursing when they were ejected. Two other similar experiences with dates were described. He saw no meals being served in the restaurant when he was there, just potato chips and beer. He testified regarding his talk with Mr. Berman in 1964, before the restaurant was opened, concerning the intended entertainment because of word that rock and roll was planned. Mr. Berman had told him it would not be rock and roll, just a moderate price restaurant for adults with possibly a piano or Hi-Fi. When the Captain visited the Roundtable in February or March 1965, he found what he considers rock and roll, music with a loud, fast, repetitious beat and dancing. He was told by one of his detectives that there had been rock and roll on the opening night. He stated that the Roundtable is not the type of restaurant he expected after hearing Mr. Berman's plans outlined to him in 1964.

Mr. Gardner Palmer, State Department representative living at 1219 29th Street one-half block from the Roundtable, testified regarding the changed atmosphere of the neighborhood since the Roundtable opened a little over a year ago. The rear of his house is no more than 200 feet from the rear of the Roundtable. Starting in February or March, 1965, he has been awakened around 2:00 a.m. in the morning on an average of once a week by the racing and screeching of cars. Since his garage on Olive Avenue is frequently blocked by cars illegally parked, he has called the police at least 15 times to have the cars removed. The heavy beat of the music has disturbed the use of his garden.

Miss Caroline Andrade, 1241 28th Street; Miss Dorothy McNade, 1217 29th Street; Miss Mary McDonald, 2724 Olive Avenue; and Mr.

Kermit Murphy, 1226 29th Street, testified in turn regarding the change from a quiet area to a noisy one since the opening of the Roundtable. Each had specific instances of depredation, nuisance, noise, beer cans, cars mis-parked, or obscenities. Mrs. Walker, wife of the Director of the National Gallery of Art, reported slashed tires and the necessity to keep all windows shut on week-end nights.

Mr. Tedson Meyers, a Peace Corps employee, who has lived at 1227 28th Street since 1962, carefully observed the nightly comings and goings at the Roundtable during the months of June and July, 1965. In the course of the observations he talked with Messrs. Carter and Berman regarding incidents that came to his attention. He reported boys in cars beside his house drinking beer and throwing the cans at his house before joining the waiting line on the sidewalk at the Roundtable. On June 4, 1965, three boys and one girl stopped their car before his house at 11:15 p.m. with radio on. When he asked that it be turned down, they turned it up and the driver of the car came up on his stoop and kicked his front door. Mr. Meyers called the police and the group left only to return later and call his wife vile names. He had written down the words but did not introduce them into the hearing because of the women present. Late last Friday night he reported to the police that three boys were urinating in his alley. In July his car's antenna was bent double. In a talk with Mr. Berman in March or April in front of the restaurant, Mr. Berman told him that he was running a rock and roll place to get his money back. Later, in June or July, Mr. Berman told him that he was trying hard to get a decent place, but was having trouble keeping gamblers and "pushers" out of his establishment. Mr. Meyers said that this neighborhood has been severely hurt by an unsavory element that has been attracted to it since the Roundtable was opened only 14 months ago.

A 19-year-old employee of the nearby Amoco Service Station reported two visits to the Roundtable where, he said, the music was rock and roll and not "jazz or classical." He did not want to buy food and saw none being served.

The Director of the Census Bureau has stated that according to the 1960 census the population of the neighborhood surrounding 2813 M Street was 962. Nearly all of these 962 people were living in the area north of M Street. Protest petitions from 259 owners and residents of that designated area were received by the Board in advance of the hearing. Forty-four residents of the area sent strong individual letters and telegrams of protest citing in detail what they describe as an invasion of the area by an undesirable group of young people since the Roundtable was opened.

Consent petitions signed by 63 owners and residents of the designated area were received together with several hundred signatures of patrons of the restaurant from the Metropolitan area and beyond.

In his closing argument, applicants' counsel maintained that the existence of a license, along with the substantial investment of money and the principals' economic dependence on it, require the Board to interpret Section 14(a)5 of the Act differently in applications, such as this one, which are not original. The Board is certainly mindful of the equities on both sides as it weighs the testimony and evidence. Nevertheless, it is the opinion of this Board that the intent of Congress, as expressed in the wording of the Alcoholic Beverage Control Act, and the interpretation of the courts, as stated particularly in Minkoff v. Payne, require holders of alcoholic beverage licenses to comply with all provisions of the Statute prior to each annual issuance of a new license just as fully as do original applicants for such licenses. Knowing that conditions change, especially in such a sensitive area, Congress specifically provided for annual licenses and nowhere in the Act referred to "renewal." Whether or not long-standing customs of cursory review or of giving preponderant weight to the equities involved in an existing enterprise may have lulled or misled some licensees into believing otherwise does not alter this statutory obligation of the Board. Therefore, the Board has heard the instant case and weighed the testimony on this basis.

Having considered carefully all of the testimony, evidence and exhibits, the Board FINDS:

(1) That the designated neighborhood remains as delineated at the time of original application for this license in May 1964, to wit:

"Beginning at Rock Creek and Potomac Parkway, and 26th Street, N.W.; south on 26th Street, N.W., to K Street, N.W.; west on K Street, N.W., to Thomas Jefferson Street, N.W.; north on Thomas Jefferson Street, N.W., to M Street, N.W.; west on M Street, N.W., to 31st Street, N.W.; north on 31st Street, N.W., to N Street, N.W.; east on N Street, N.W., to 30th Street, N.W.; north on 30th Street, N.E., to Dumbarton Street, N.W.; east on Dumbarton Street, N.W., to Rock Creek and Potomac Parkway."

(2) That this not being an original application, neither Section 14(c) of the Act nor Section 2-103 of the Regulations is applicable.

(3) That the principal officers of the applicant corporation do not meet the requirements of Section 14(a)1, which calls for such officers to be "of good moral character and generally fit for the trust to be in (them) reposed." This conclusion is drawn inescapably from the mass of evidence that the applicants misled both Captain Kennedy and the Board (the latter under oath in open hearing) as to their intentions. It is quite unnecessary for us to agree on a precise or official definition of what constitutes "rock and roll music" when there is common understanding of its nature on the part of such diverse witnesses as police officers, a restaurateur, and a 19-year-old filling-station employee. Furthermore, the important element is not the amount of old-fashioned melodies, jazz or loud, heavily-accented, repetitious numbers played; the significant thing is that, commencing at the opening night party, at which it was hoped to make the best possible impression on invited guests, and more or less continuously thereafter, there were entertainers featuring electric guitars and drums and dancing of the type which moves young people today. The testimony is overwhelming that the

stated intentions to run a high-class restaurant appealing to a middle-aged clientele and featuring roast beef and steak were not carried out even initially. Contrary to testimony given by the first of the corporation's witnesses, a public hall license was applied for less than three weeks after opening. Admission has been charged ever since the public hall license was granted, which is characteristic of places catering primarily to large numbers of patrons coming for entertainment and dancing, but hardly characteristic of a bona fide restaurant. Likewise, the advertising on radio stations aimed at youth, beginning near the opening date of the Roundtable, showed intentions other than a high-class eating establishment. The record is replete with further evidence to the effect that the applicant's principal officers clearly demonstrated bad faith in connection with the original license application. Accordingly, the majority of the Board believes that such actions demonstrate that the applicants are not "generally fit for the trust to be in (them) reposed," and thereby fail to meet the requirements of Section 14(a)1.

(4) The premises are not appropriate under terms of Section 14(a)5. The record discloses the overwhelmingly unfavorable wishes of the residents and property owners of the neighborhood. In the instant case, far more sharply than in similar cases recently before the Board, residents have related the deterioration of their peaceful, quiet, residential area to the arrival of the applicant's establishment. Because the Roundtable has been in operation only 14 months and because it is apparently the only licensed establishment in this section of Georgetown which attracts large numbers of 18 to 25-year-olds seeking the loud music generally called rock-and-roll, the Majority of the Board believes it to be entirely reasonable to conclude that the young persons whose nocturnal activities have been so damaging to the neighbors are patrons of the Roundtable. There are a number of direct connections between youthful wrong-doers and the Roundtable revealed by the testimony from both police and private witnesses. Other connections may be considered circumstantial but quite persuasive. Thus the character of the premises,

utilized as they have been, is clearly incompatible with the adjoining residential area.

The letters and testimony in the record supporting the application generally relate to the legitimate character of the operation inside the premises. This, however, is not the issue in dispute. Section 14(a)5 relates to factors outside the premises and its requirements have clearly not been met.

CONCLUSION

WHEREFORE, it is the Finding of the Majority of the Board this 29th day of January, 1966, that the license desired is hereby DENIED under Section 14(a)1 and 14(a)5 of the Act.

ALCOHOLIC BEVERAGE CONTROL
BOARD IN THE DISTRICT OF
COLUMBIA

/s/ Joy R. Simonson

/s/ J. Bernard Wyckoff

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IN RE: Carber, Inc.
t/a Roundtable Restaurant

MINORITY OPINION

I do not agree with the Finding or Conclusion of the Majority of the Board in this matter.

The record on file with the Alcoholic Beverage Control Board concerning 2813 M Street N.W. shows that after hearing, the original license was granted on June 1, 1964, and finally issued on November 25, 1964. The record further discloses that on January 7, 1965, the corporation filed an application for its 1965 license (renewal) and on January 18, 1965, this license was granted without protest and was thereafter issued effective February 1, 1965. That no time during the

past license year (or during its entire existence for that matter) has there been filed against the licensee any complaint nor has the licensee been cited for any alleged violations of the Act or Regulations to date.

The Majority of the Board lays great stress on the fact that this (but for the exceptions within the Act itself) is an application for a new license, and as such must comply strictly with all the provisions of Section 14 of the Act, and then, refused to accept evidence by applicant in regard to the operation of the business of the licensee or indeed the fact that the operation proposed is identical to its operation during the past license year in which no complaints had been received nor any citation from the Board itself had been directed to the licensee for the so-called failures to which the Board now objects.

The majority opinion apparently suggests that it is the duty of a licensee to control the actions of its patrons before entrance to and after exit from to the premises of the licensee and with this contention I cannot agree. Nor can I agree to deny a license requesting renewal unless and until specific charges have been filed and a hearing had in compliance with the Alcoholic Beverage Control Regulations and Act.

I would grant this license.

/s/ James G. Tyson

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

EXCERPTS FROM
NEWS

Volume II, No. 5

January 1965

* * * * *

COMMITTEES AND CHAIRMEN

Here are the committees of the Association and their chairmen appointed by the Association's President, Captain Belin:

Education, Mrs. Alden W. McDaniel — FE 8-2690

Fine Arts & Historic Buildings, Miss Dorothea de Schweinitz — FE 3-9516

Legislation & Taxation, Louis Alexander Traxel — NO 7-0012

Membership, Miss Eleanor P. Colston — FE 8-0130

Parks, Playgrounds, and Recreation, Bernard Wyckoff — FE 8-2419

Public Health, Emil Press — FE 3-5974

Public Relations, Miss Mary Faith Wilson — FE 7-1327

Streets, Trees, and Sidewalks, Brig. Gen. Karl S. Bradford — FE 3-3110

Zoning, Planning, and Building Regulations, Mrs. Harold B. Hinton —
FE 3-1425

Traffic and Highways, Frederick S. Hill — FE 3-6670

Parking, John W. Gill — FE 8-5000

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

EXCERPTS FROM
NEWS

Volume II, No. 9

May 1965

* * * * *

SLATE OF OFFICERS

In accordance with the By-Laws of The Association, our President appointed a Nominating Committee to propose a slate of officers for the coming year. At our April meeting, the Hon. Gordon Gray, Chairman of the Nominating Committee, placed the following slate in nomination for consideration at the Annual Meeting:

President
First Vice President
Second Vice President
Third Vice President
Treasurer
Secretary

Delegates to The Federation
of Citizens Associations

Captain Peter Belin, USN (Ret.)
The Hon. Philip W. Bonsal
Mr. Gardner Palmer
Miss Louise Trimble Foster
Mrs. Jack Hite Gilbert
Mr. J. Bernard Wyckoff

Mr. Paul A. Chadwell
Mr. Edward F. Kilpatrick
Miss Elizabeth La Branche

* * * * *

ABOUT M STREET TAVERNS

Resolutions passed at our April meeting call for (1) alcohol being served only to teenagers issued official identification cards with parents' approval; (2) curbs on liquor licenses to taverns here; (3) more police protection in the M Street area; (4) study of bill introduced in Congress by Rep. Abraham J. Multer (D-N.Y.) to raise the drinking age to 21.

* * * * *

NEWS Supplement On

TAVERNS

EXHIBIT #1
September 1965
The Citizens Association
of Georgetown

Recent liquor license policies by the District of Columbia have permitted a major portion of Historic Georgetown to become a cheap honky-tonk tavern strip.

There are 38 licensed restaurant-bars now operating in Georgetown's M Street area. Twenty of these were granted licenses since 1962.

Each week thousands of tavern patrons swarm to Georgetown, many of them rowdies who spill into our residential neighborhood creating untold disturbances, vandalism, and parking violations. The distress among residents is grievous.

Thousands of tavern patrons are young people who, forbidden to drink in Virginia and Maryland bars until age 21, invade the "Georgetown strip" where D. C. law permits beer drinking at age 18.

On August 31 Senator Hugh Scott (R-Pa.) spoke before the U. S. Senate about the problem, and introduced a bill (S. 2480) to bring the District's legal drinking age up to 21 years.

This Association's Committee on Legislation and Taxation is urging the Senate District Committee to hold hearings on S. 2480, and the House District Committee to hold hearings on H.R. 5418, a similar bill introduced into the U.S. House of Representatives by Rep. Abraham Multer (D-N.Y.).

Meanwhile, our Association has appealed to the District of Columbia Government to return to full consideration of the D. C. regulation boxed below:

THE LAW

Section 14 (a) 5 of the D. C. Alcoholic Beverage Control Act reads:

"... Before a license is issued, the (ABC) Board shall satisfy itself ...

"5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired ..."

GEORGETOWN'S M STREET TAVERNSChronicle of Recent Events1965

- Feb. 2 Despite objections from neighborhood residents, the D. C. Alcoholic Beverage Control Board (ABC) renews liquor licenses to both the Corral, 3267 M Street and the Crazy Horse, 3259 M Street.
- Feb. 8 ABC Board, voting unanimously, denies license for proposed Chateaubriand, 3207 M Street, saying the area already is "adequately serviced" by licensed restaurants.
- June 10 The President of The Citizens Association of Georgetown testifies before the D. C. Citizens Advisory Council to recommend raising the drinking age in the District of Columbia to age 21 years.
- June 25 ABC Board issues license for the proposed Steak Pitt, 3308 M Street, one block from the Chateaubriand, and denies license for the proposed Cafe Balzac, 1614 Wisconsin Avenue.
- June 25 ABC Board Chairman, Mrs. Joy Simonson, asks the D. C. Commissioners for authority to provide that applicants for liquor licenses for restaurants must obtain prior permit from ABC in order to have dancing and entertainment on the premises.
- July 12 A representative of The Citizens Association of Georgetown meets with Mr. John Middleton, Assistant Corporation Counsel of the D. C., to support Mrs. Simonson's request of June 25.
- July 19 The Citizens Association files suit in the U. S. District Court to vacate and annul the license issued to the Steak Pitt on June 25 on the ground, among others, that this was a "substantial contradiction" to the Feb. 8 decision denying license to the Chateaubriand.
- July 29 Louis N. Nichols resigns from the ABC Board, citing personal and health reasons.
- Aug. 4 Owners of the proposed new Henry's, 2917 M Street, withdraw application for a license, claiming to do so in the interest of "community calm." Through efforts of The Citizens Association, 175 nearby residents sent letters and petitions opposing the license.
- Aug. 4 The Citizens Association writes D. C. Commissioner Walter C. Tobriner to urge appointment to the ABC Board of a person with the "very keenest understanding of the public trust."
- Aug. 13 ABC Board finds that Clyde's, 3236 M Street, had served alcoholic beverages after legal closing hours and had allowed "one to remain on its licensed premises when he was drunk or intoxicated." ABC suspends Clyde's license for three days.
- Aug. 18 The President of The Citizens Association leads a delegation to ask D. C. Commissioner John B. Duncan for both new directives and new legislation to provide the ABC Board with greater authority over licensees.
- Aug. 19 Commissioner Duncan announces the appointment of J. Bernard Wyckoff to the ABC Board.
- Aug. 31 Senator Hugh Scott (R-Pa.) introduces S. 2480 to raise to 21 years the legal drinking age in the D. C.
- Sept. 13 ABC hearing scheduled at 2:00 P.M. on charge that the Crazy Horse, 3259 M Street, had served alcoholic beverages to a minor.

A DOUBLE-EDGED TRAGEDY

The decline of Georgetown because of excessive tavern activity in the M Street area is a double-edged tragedy:

It is a decline for in-city family living.

It is also a decline for an irreplaceable historic district in the heart of the Nation's Capital.

The startling fact is that deterioration is permitted at the very moment President Johnson has called for new effort to bring beauty and quality to urban life. Most American cities would welcome restoration of decayed central districts into attractive family neighborhoods. Georgetown pioneered to become just such a neighborhood. And it did so by private citizen effort without the use of government funds.

The United States Congress recognized Georgetown's accomplishment by passing, in 1950, Public Law 808, setting the boundaries of Old Georgetown, declaring it to be of "historic interest," and providing for the preservation of its architectural character.

There are other instances in The United States where laws governing alcoholic beverages have encouraged commercial interests to develop a honky-tonk tavern "strip across the river." But we know of none that has caused so much damage to residential quality and historic value as the "Georgetown strip" in the Nation's Capital.

OUR POLICY

The policy of The Citizens Association of Georgetown was outlined in The Association's letter of August 4, 1965 to the Hon. Walter C. Tobriner, Commissioner of the District of Columbia.

Pertinent paragraphs from the letter follow:

"The Citizens Association of Georgetown has opposed the issuance of various Class C restaurant liquor licenses in the Georgetown area, particularly in those cases where it is apparent that music and dancing are to be permitted on the premises. Despite the known views of the citizens of the Georgetown community, the Alcoholic Beverage Control Board has renewed existing licenses, and in the past four years has greatly increased the number of Class C licenses outstanding in the "M" Street area. [A tabulation of such outstanding licenses is attached. From this tabulation it is apparent that saturation has been reached, as the Alcoholic Beverage Control Board itself agreed in a decision earlier this year.]

"This licensing policy has resulted in creating a cheap honky-tonk atmosphere in this historic part of the nation's capital. It has attracted to this high-grade residential section crowds of young undesirables, many from outside the District, together with their motor vehicles for which no adequate parking is available. It should be noted that in granting occupancy permits for these new establishments apparently little or no consideration was given to the substantial intensification of property-use involved, which should have required provision for off-street parking. The result is that the police have been unable to enforce parking regulations to provide a minimum of safety at street intersections neighboring "M" Street. Nor have the police been able to prevent a marked increase in illegal drinking in autos parked in the adjacent residential section. Other nuisances, indecencies, and depredations to property have prompted some citizens near "M" Street to hire private police because of the inability of the regular police to cope with the situation.

"The Association maintains that the holding of a permit to sell alcoholic beverages is a privilege, not a right, a point well substantiated by recent court decisions. In these circumstances, therefore, it is incumbent upon applicants for such licenses, or the renewal thereof, to prove that their issuance or reissuance is in the public interest, rather than to have the burden of proof placed on the adversely-affected citizenry. It is hoped that the Alcoholic Beverage Control Board when fully reconstituted will scrutinize each license renewal within this framework and not hesitate to refuse such renewals when justified by the reasonable objections of citizens resident in the area. Additionally, the question of qualified renewal might be explored together with such administrative changes as would be necessary to enforce such qualification. The Association would be pleased to work with the Board in this respect, since it offers an opportunity to correct the situation extant in Georgetown. . . ."

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

EXCERPTS FROM
NEWS

Volume III, No. 3

November 1965

* * * * *

CHEAP TAVERN STRIP ON M STREET

Each week the cheap, honky-tonk tavern strip created by the District of Columbia Government in Georgetown's M Street area continues to draw thousands of undesirables, teenage drinkers and lawbreakers.

In order to prevent the strip from becoming even worse, the Association's Committee on Legislation and Taxation has informed the Congress of our opposition to two bills which our Committee termed the "unfortunate efforts of the District of Columbia Commissioners and the liquor industry to empower the Commissioners to increase drinking hours, and to weaken the present statutory provisions with respect to food as a chief source of revenue on licensed premises." The bills are H.R. 3316 and H.R. 10744. They will be up for consideration by Congress when it reconvenes January 10.

With respect to taverns, residents are advised to heed the WARNING carried on the outside page of this NEWS.

* * * * *

WARNING

If you are called upon to sign a petition for an additional restaurant in Georgetown, we urge you to inquire whether a liquor license is sought and to consider that this Association is opposed to all new licenses because, among other reasons, our area is saturated with licensed establishments.

You are also urged to bear in mind the fact that once a liquor license has been granted, the nature of the licensed establishment can change drastically, or it can be sold to persons disinterested in residential quality. And in the past it has been virtually impossible to cause a liquor license, once issued, to be revoked!

News
EXTRA

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

November 19, 1965

THE M STREET TAVERN STRIP
AND CRIME PREVENTION THROUGHOUT ALL OF GEORGETOWN

We're going to campaign against two of the worst offenders in the M Street tavern "strip" and we need your help ! !

Because of announcement of this campaign at our monthly meeting November 8, owners of the Corral and the Peppermint Lounge decided to give us as little time as possible. On November 10 they posted notice that on the DAY BEFORE THANKSGIVING — November 24 — they will go before the Alcoholic Beverage Control Board (ABC) to request renewal of their Class "C" liquor licenses.

It is the opinion of our Committee on Licenses that the Corral, 3267 M Street, and the Peppermint Lounge, 3263 M Street, are two of the worst offenders of public order now operating on the so-called tavern "strip" in Georgetown's M Street area. They draw rowdy teen-agers, and other undesirable elements which cause disorder, nuisances, vandalism and other crimes throughout this Historic District. This puts undue burdens on Police Precinct No. 7's understaffed force, thereby robbing the rest of Georgetown of adequate police protection.

We mean to demonstrate this to the ABC Board on the 24th with your help!

COME AND SUPPORT US. . . .

. . . at the November 24 hearing. It opens at 10:00 A.M. before the ABC Board in room 201, District Building, 14th and E Streets, N.W. Meanwhile, immediately indicate your opposition to liquor license renewals at 3267 M Street (The Corral, Case No. 7212) and at 3263 M Street (the Peppermint Lounge, Case No. 8810). To do this write — or better — send a wire TODAY to:

Chairman, ABC Board
District Building, 14th and E Streets, N. W.
Washington, D. C., 20004

The Association knows of no greater threat to in-city family residents and to the security of person and property in Georgetown than the few rotten apples in the barrel of otherwise reputable licensed restaurants.

THE LAW

Section 14 (a) 5 of the D.C. Alcoholic Beverage Control Act reads:

"... Before a license is issued, the (ABC) Board shall satisfy itself. . .

"5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired . . . "

THE CITIZENS ASSOCIATION OF GEORGETOWN
1623 - 28th Street, N. W.
Washington, D. C.

EXCERPTS FROM
NEWS

Volume III, No. 4

December 1965

* * * * *

MEMBERSHIP ACTION RE TAVERNS & LICENSES

The membership at our monthly meeting on November 8 voted to oppose all new Class "C" (Restaurant) liquor licenses in Georgetown on the grounds, among others, that this area is saturated with licensed establishments. The membership also voted the following:

1. RESOLVED that The Association support an amendment to Title 25-212 of the D. C. Code in order to prohibit the sale of alcoholic beverages to persons under 21 years of age.

2. RESOLVED that The Association oppose amendments to Title 25 of the D. C. Code which would permit the Commissioners to increase the number of hours in which alcoholic beverages may be served for on-premises consumption, and which would weaken the present requirement of the Code that food be the chief source of revenue on licensed premises.

3. RESOLVED that The Association support such amendments to the Code and/or to the Commissioners' regulations as may be necessary in order to authorize the requirement of prior approval by the ABC Board for dancing and entertainment on licensed premises.

4. RESOLVED that The Association oppose the granting of alcoholic beverage licenses for 1966 to establishments which have been disruptive to residential living in Georgetown, and authorizes its Committee on Licenses to designate such establishments and to participate in ABC Board hearings in opposition to their applications.

* * * * *

[Filed April 5, 1966]

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARBER, INC.
t/a Roundtable Restaurant,
Plaintiff,

v.

JOY R. SIMONSON, et al.,
Defendants,

and

MR. AND MRS. GARDNER E.
PALMER, et al.,
Intervenor Defendants.

Civil Action No. 235-66

ORDER

The Court, having considered testimony and other evidence in connection with plaintiff's motion for preliminary injunction, and having considered defendants' motion for summary judgment, the memoranda of points and authorities in support thereof and in opposition thereto, and the exhibits attached to the pleadings, and having heard oral argument in open court, it is, by the Court, this 5th day of April, 1966,

ORDERED, ADJUDGED AND DECREED as follows:

(1) That defendants' motion for summary judgment be, and the same is hereby, granted.

(2) That plaintiff's motion for preliminary injunction be, and the same is hereby, dismissed as moot, and the complaint be, and the same is hereby, dismissed.

(3) That counsel for plaintiff having advised this Court that Notice of Appeal to the United States Circuit Court of Appeals for the District of Columbia Circuit will be filed within five (5) days from the date

hereof, defendants and each of them, their agents, successors, employees, attorneys, and all persons in active concert or participation with them, be, and they are hereby, enjoined until final decision of plaintiff's said appeal by said United States Circuit Court of Appeals for the District of Columbia Circuit from interfering with the continued operation of plaintiff's restaurant known as "The Roundtable Restaurant" and located at 2813 M Street, Northwest, in the District of Columbia as a retail Class "C" licensee, with all rights, privileges, and obligations of such retail Class "C" licensee, pursuant to the Alcoholic Beverage Control Act and Regulations promulgated thereunder.

/s/ John J. Sirica
JUDGE

[Certificate of Service]

[Filed April 11, 1966]

NOTICE OF APPEAL

Notice is hereby given this 11th day of April, 1966, that CARBER, INC., trading as ROUNDTABLE RESTAURANT hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 5th day of April, 1966 in favor of JOY R. SIMONSON, et al, defendants and MR. AND MRS. GARDNER E. PALMER, et al, intervenor defendants, against said CARBER, INC. t/a ROUNDTABLE RESTAURANT.

BINDEMAN AND BURKA

By /s/ Leonard W. Burka
Attorney for Carber, Inc.

* * *

[Notice of Service]

MR. K. MILLER

Monday, November 7, 1966
MMGE
10³⁰
am

BRIEF FOR APPELLANTS

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC.,
and
SEABRIGHT, INC.,

Appellants,

v.

JOY R. SIMONSON, et al.,
Individually and Comprising the Membership
of the Alcoholic Beverage Control Board
and
CITIZENS ASSOCIATION OF GEORGETOWN,

Appellees.

Appeal from the United States District Court
for the District of Columbia

JAMES F. O'DONNELL

927 15th Street, N. W.
Washington, D. C., 20005
STerling 3-5399

DENIS K. LANE

917 15th Street, N. W.
Washington, D. C. 20005
STerling 3-1781

Attorneys for Appellants

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 3 1966

Nathan J. Paulson
CLERK

QUESTIONS PRESENTED

I

Were the appellants denied due process of law and a fair hearing before the Alcoholic Beverage Control Board due to bias and personal interest of a Board member?

II

Was the action of the Board in denying the renewal of appellants' licenses contrary to law as being unsupported by substantial evidence when testimony failed to show any violation of law or regulations attributable to the appellants?

III

Was the action of the Board in denying renewal of appellants' licenses arbitrary and capricious in basing its findings upon evidence which the Board found not sufficient or controlling in similar cases wherein it approved the issuance of licenses, in applying a different standard to appellants than that which had been in effect for over 30 years without notice to appellants in any way, in its decision to treat appellants' application to "renew" existing licenses as being identical with applications for "original" licenses?

IV

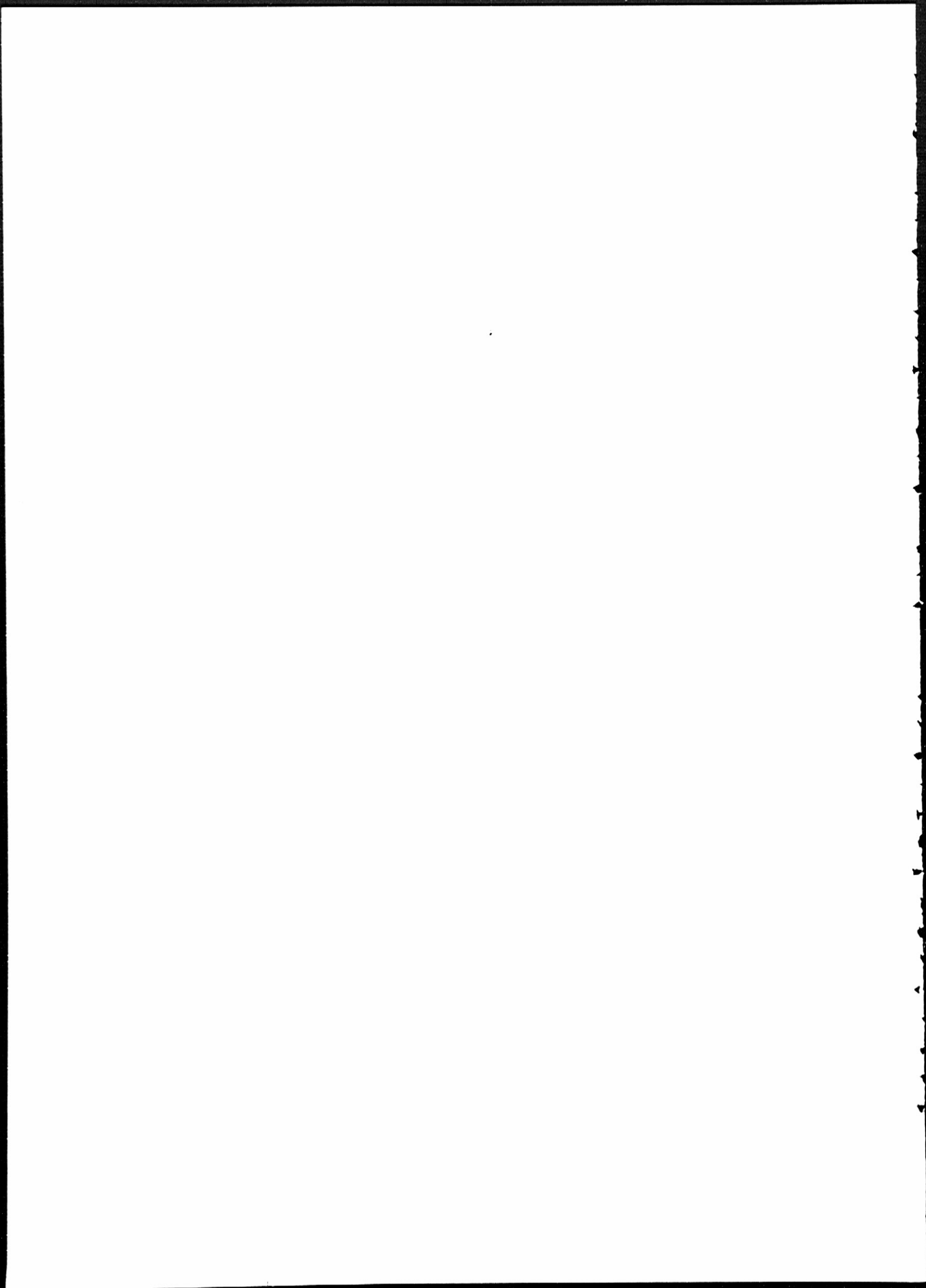
Under the circumstance of the case was the action of the Court erroneous and premature in granting Summary Judgment at a time when issues of fact were before the Court, particularly those relating to bias of Board member Wyckoff, a motion for Preliminary Injunction was at issue before the Court, involving this bias question, and appellants were by the Court precluded from pursuing discovery on the pending motions and complaint?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC.,
and
SEABRIGHT, INC.,

Appellants,

v.

JOY R. SIMONSON, et al.,
Individually and Comprising the Membership
of the Alcoholic Beverage Control Board
and

CITIZENS ASSOCIATION OF GEORGETOWN,

Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANTS

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the United States District Court for the District of Columbia granting defendants' motion for summary judgment and dismissing plaintiffs' motion for preliminary injunction and plaintiffs' complaint for permanent injunction. Jurisdiction is based on 28 United States Code 1291.

STATEMENT OF THE CASE

The appellant, Kaycee, Inc., a District of Columbia Corporation, operates a restaurant at 3263 M Street, N.W. where it has been the holder of a Retailer's Class "C" Alcoholic Beverage Control license since January 11, 1963. The appellant, Seabright, Inc., a District of Columbia Corporation, operates a restaurant at 3267 M Street, N.W., Washington, D.C. where it has held Retailer's Class "C" Alcoholic Beverage Control license since May 23, 1955. The appellees are Joy R. Simonson, James G. Tyson, and J. Bernard Wyckoff, members constituting the Alcoholic Beverage Control Board for the District of Columbia (hereinafter referred to as the "Board"); and The Citizens Association of Georgetown is an intervenor appellee which protested to the Board against the renewal of said Retailer's Class "C" licenses to appellants Kaycee, Inc and Seabright, Inc.

Appellants, in November 1965, applied to the Board for renewal of their Class "C" licenses. These license applications were formally protested by the Citizens Association of Georgetown.

Hearings on the protest were scheduled by the Board. At the outset of a joint hearing the appellants herein requested and moved that Board member Wyckoff disqualify himself or be disqualified from participating in the hearing because of bias and personal interest; and appellants moved further for permission to present oral testimony to show the close relationship then existing and which had previously existed between Board member Wyckoff and the protesting Citizens Association of Georgetown involving appellants. (Tr. 15-24; J.A. 17, 41-46).

In support of these motions appellants filed an affidavit spelling out some aspects of the bias and personal interest of Board member Wyckoff (J.A. 17-24). At the conclusion of the case before the Board, member Wyckoff placed in the record an affidavit deposing that he had no recollection about the said Citizens Association's opposition to prior applications

nor of any discussion of licensed establishments which may have taken place at meetings of the Association. (J.A. 24-29) Mr. Wyckoff denied that he would be influenced on these cases by his affiliation with the Citizens Association of Georgetown. (J.A. 24-26) On desposition member Wyckoff later stated that he was present and acting as Secretary of the Executive Committee of the Association in July of 1965 when the Committee voted to file suit on behalf of said Association against the Alcoholic Beverage Control Board for issuing a license on M Street (to the Steak Pitt) over the protest of the Citizens Association. (J.A. 246, 296-297)

The Citizens Association had made it an official policy in January 1965 to oppose the continued operation of appellant Seabright, Inc. and actively protested its license application for the year beginning February 1, 1965. (J.A. 273-275) At that time Ernest E. Byrd was a principal officer and stockholder of Seabright, Inc. He was also a principal of Kaycee, Inc. when the Citizens Association protested both license applications in the hearing involved in this appeal

In August 1965, at the time of his appointment to the Board, appellant Wyckoff was serving the Citizens Association of Georgetown in the elective office of Secretary and as a member of the Executive Committee. (J.A. 111-113, 235-236) He was serving in these capacities when on August 4, 1965 the said Citizens Association wrote Commissioner Walter Tobriner expressing its opposition to the operation of M Street licenses and the ABC Board's policies in renewing licenses, and further urging that an appointment be made to fill the existing vacancy on the Board as would comply with the wishes of the Citizens Association. (J.A. 102-103) At the time of the hearing before the Board in the instant cases member Wyckoff had resigned as Secretary of the Citizens Association but was maintaining full membership in the Association and had been receiving at his residence communications from the Citizens Association condemning the appellants Kaycee, Inc. and Seabright, Inc. with inflammatory statements (as referred to Minority Opinion of Board member James G. Tyson) (Tr. 161-163; J.A. 29, 30, 71-72, 92)

After denying appellants motions to disqualify Board member Wyckoff, the Board proceeded to hear testimony for and against appellants' license applications. (Tr. 23, 24; J.A. 45-46)

In the testimony at the hearing the sole opposition to the licenses was voiced by the Citizens Association of Georgetown through its president Peter Belin and through several Association members who were residents of Georgetown. (Tr. 122, 155, 164, 168, 175, 184; J.A. 59, 70, 72, 73, 75, 78, 111-113) The Board also received in evidence letters adverse to appellants and written by persons who live within closest proximity of the Wyckoff residence at 3328 O Street, N.W. One such letter was from J. Noel Macy, a Wyckoff neighbor, a member of the Citizens Association of Georgetown and the person who initially sponsored Mr. Wyckoff for the vacancy on the ABC Board and promoted his candidacy with the Democratic Central Committee. (J.A. 101, 244-245) Mrs. Polly Shackleton, a member of the Citizens Association of Georgetown who gave testimony adverse to appellants before the Board, was a member of the Democratic Central Committee whose endorsement Mr. Macy sought and obtained for Mr. Wyckoff's appointment to the ABC Board. (J.A. 113, 244-245)

The Board denied appellants' applications for renewal of their Retailer's licenses Class "C" and issued written decisions in which Board members Wyckoff and Simonson joined and from which Board member Tyson dissented, writing a minority opinion. (J.A. 29, 86, 92, 93)

The majority opinion was subsequently modified by the Board following appellants' Motion for Additional Findings and for Reconsideration. (J.A. 30-32)

In its decision the Board found no violation of law or regulations which could be attributed to either of the appellants. The Board found that the officers and principals of appellant corporations were of good moral character and met all the personal qualifications for the licenses in question under Sect. 14 (a) 1, 2 and 3 of the Act. (J.A. 91, 98)

The adverse decision of the Board turned solely on what it determined to be the wishes of persons residing or owning property in the neighborhood of the premises for which licenses were desired. (J.A. 91, 98)

In its revised order the Board defined the boundaries of the neighborhood which it used to reach the conclusion upon which its decision turned adversely to appellants. (J.A. 31, 111) The boundaries delineated by the Board placed the residence of Board member Wyckoff within that area and close to the center thereof.

Appellants filed an action in the United States District Court for the District of Columbia, seeking a Temporary Restraining Order, a Preliminary Injunction, and a Permanent Injunction to compel issuance of the licenses by the Board. (J.A. 4-34)

The Temporary Restraining Order was entered by the Court pending hearing on the Motion for Preliminary Injunction. (J.A. 35-36)

In preparation for trial and the motion then pending plaintiffs caused subpoenas for depositions to be served upon witnesses to explore discovery on the question of bias and personal interest of Board member Wyckoff. The District Court granted defendants' motion to quash the subpoenas and depositions of witnesses Polly Shackleton and Walter Tobriner but allowed plaintiffs to take depositions of defendant Wyckoff and Citizens Association Belin in open court. (J.A. 39-40) Plaintiffs unsuccessfully renewed motion to take deposition of Polly Shackleton and for further discovery.

The Court announced it would proceed first with argument on defendants pending Motion for Summary Judgment. Earlier the Court announced that matters outside the administrative record before the Board would not be considered by the Court on the Motion for Summary Judgment. (J.A. 116)

The Court granted defendants' Motion for Summary Judgment mooting plaintiffs' pending Motion for Preliminary Injunction. The Court, *sua sponte*, granted an injunction to permit continued operation of the licensed establishments by the appellants pending outcome of the cases on appeal before this Court. (J.A. 117-118)

STATUTES AND REGULATIONS INVOLVED

Public Law No. 85, 73rd Congress (H.R. 6181), entitled "An Act To Control the manufacture, transportation, possession and sale of alcoholic beverages in the District of Columbia." This act was codified and is found in the District of Columbia Code, 1961 edition, as Section 25-101, *et seq.*

In denying appellants' applications for licenses the majority of the Board based its decision on Section 25-115(a)5, Section 14(a)5 of the Act:

"Before a license is issued the Board shall satisfy itself:

"5 That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

SUMMARY OF THE ARGUMENT

I

Appellants were not accorded due process of law and a fair hearing before the Board because a hearing that was fair and gave the appearance of fairness could not be accorded when in a hearing resulting in a two to one decision, a member casting the decisive vote was so closely allied to the protesting citizens association and his neighbors who constituted all of the witnesses against the appellants. That Board member stood in the position of one who had previously opposed appellants and would now judge them on license questions. He also stood in the position of one who, as a resident of the neighborhood whose wishes were to be determinative, had interests common to those who protested appellants license.

II

The Board's own findings make clear that the testimony at the hearing failed to show that the appellants operated their licensed premises in any manner which was illegal or in violation of regulations. The sole evidence which linked to the appellants' establishments any disorderly act allegedly committed by a "patron" away from the premises was introduced by way of uncorroborated hearsay and related to isolated instances over which appellants could have no control. On the contrary the evidence showed appellants' licensed premises to be well supervised, orderly and giving cooperation to the police and the ABC Board.

III

Where no arrests (save a charge on which Kaycee, Inc. was cleared by the Board) took place at appellants' licensed premises, there could be no fair basis for using police statistics on area arrests to deny these licenses and at the same time grant a license next door (3259 M Street, N.W.) to a much larger and similar operation to which statistics must be more applicable.

There is no fair basis to deny appellants licenses based on the adverse testimony of Citizens Association of Georgetown, and protest petitions of those residing or owning property in the defined neighborhood and for the Board to grant a license next door (3259 M Street, N.W.) to a similar but much larger establishment also protested by the same Citizens Association accompanied by substantially the same number of protest petitions from "the neighborhood".

Such actions by the Board, coupled with the setting of different neighborhood boundaries for the license at 3259 M Street is arbitrary and capricious, just as it is for the Board, in reviewing appellants' license applications, to abandon its practice of over 30 years standing of considering "the rights attendant upon an existing license" on an application for renewal of the same, as it had done in the Findings in the Seabright Case in January, 1965.

IV

Finally, it was error for the trial court to grant defendants' Motion for Summary Judgment in light of reasons hereinabove set forth and at a time when there were issues of fact before the Court, especially those relating to the bias of Board Member Wyckoff, when a Motion for Preliminary Injunction was at Issue before the Court involving this bias question, and at a time when the Court precluded appellants from pursuing discovery procedure by way of deposition on the pending Motion for Preliminary Injunction and Permanent Injunction.

ARGUMENT

I. Appellants Were Improperly Deprived Of A Hearing According Due Process Of Law Because Of A Board Member's Bias And Conflict of Interest

Appellants complained unsuccessfully at the outset of the Board hearing about the necessity of Member Wyckoff's removal in order to have a hearing free from bias and conflict of interest and sought unsuccessfully to have discovery and opportunity to present testimony bearing on such bias. On this question of bias appellants sought unsuccessfully full discovery by deposition in District Court, which quashed subpoenas for discovery by deposition. (J.A. 39-40)

The law on the subject is clear:

"Persons whose rights will be affected by action taken by an administrative officer or agency are entitled to have such action taken by one that is impartial, free from bias, and that has not prejudged the issues." 73 C.J.S. *Public Administrative Bodies and Procedure*, Section 62.

Mr. Wyckoff fails on all the just-quoted requirements. The United States Court of Appeals for the District of Columbia has gone one step further and required not only complete fairness, but also the "very appearance of complete fairness." (*Amos Treat & Co. v. Securities and Exchange Commission*, 113 U.S. App. D.C. 100, 306 F.2d 260, 267 (1962).)

A recent important case on the subject of "disqualification" in the District of Columbia is *Jarrot v. Scrivener*, 225 F Supp 827 (1964). In that case, as here, the question was raised as to the effect of *ex parte* and secret communications addressed to certain members of the Board of Zoning Adjustment. As Judge Pine said so forcefully:

"Indeed if there is any difference [between an administrative hearing and a judicial trial], the rigidity of the requirement that the trier be impartial and unconcerned in the result applies more strictly to an administrative adjudication, where many of the safeguards which have been thrown around court proceedings have, in the interest of expeditious and a supposed administrative efficiency been relaxed."

Of course, there are *ex parte* communications involved herein, (J.A. 72) but there is much more. Mr. Wyckoff has admitted a lengthy community of interest with the *very persons* protesting the plaintiffs' applications.

There is but one Citizens Association serving the neighborhood in which he resides, *viz.*, The Citizens Association of Georgetown (J.A. 235).

At the time of the hearing before the Board he was a full member of that Association and had been a member since 1922. (J.A. 111, 235)

At the time of the hearing before the Board he was still receiving communications from the Citizens Association on subjects which included its vehement and inflammatory opposition to the licensed establishments of the appellants. (Tr. 162, 163; J.A. 22, 23, 72, 241, 315-323)

At the time of the hearing before the Board, and prior thereto, he was a resident of the very "neighborhood" whose wishes were ultimately to result in an adverse decision by the Board on appellants' license applications.

At the hearing before the Board six citizen witnesses testified in opposition to appellants' license applications. All were members of the Citizens Association to which member Wyckoff belonged. One of these was Association President Belin who served in that capacity in 1965 at a time when Mr. Wyckoff was elected and served as Secretary of the Association as well as being a member of its Executive Committee. Another of the six citizen witnesses, Polly Shackleton, also a member of the Association and a resident of Georgetown, was a friend of Mr. Wyckoff's of 15 to 20 years standing. Mrs. Shackleton serves on the Democratic Central Committee, which during her term had endorsed Mr. Wyckoff's candidacy for the ABC Board in the summer of 1965.

Among protest letters received in evidence by the Board were several from immediate neighbors of the Wyckoff residence, one of whom, J. Noel Macy, was the first to espouse the candidacy of Mr. Wyckoff to the ABC Board in the summer of 1965. (J.A. 101, 244, 245) and to seek endorsement for him from the Democratic Central Committee. (J.A. 113, 244, 245)

Another protest letter was received at the hearing from Philip Bonsal of Georgetown who had served as Vice President of the Citizens Association when Mr. Wyckoff was its Secretary and had been a member of the Associations Executive Committee serving with Mr. Wyckoff. (J.A. 99, 112-113)

While Mr. Wyckoff was serving as secretary and as a member of the Executive Committee in 1965, the Citizens Association on August 4 wrote Commissioner Walter Tobriner setting forth its policy of opposition to M Street licenses which featured music and dancing and its dissatisfaction with the policy of the ABC Board, theretofore existing, of treating applications for renewal of existing licenses in a manner different from applications for an original license. This letter expressed the hope:

"It is hoped that the Alcoholic Beverage Control Board when fully reconstituted will scrutinize each license renewal within this framework and not hesitate to refuse such renewals when justified by the reasonable objections of citizens resident in the area. Additionally, the question of qualified renewal might be explored together with such administrative changes as would be necessary to enforce such qualification. The Association would be pleased to work with the Board in this respect, since it offers an opportunity to correct the situation extant in Georgetown . . ."

The letter expressed the further hope that in filling the vacancy on the ABC Board the Commissioners would select a person with qualifications acceptable to the Citizens Association of Georgetown. (J.A. 102-103)

While Mr. Wyckoff was serving as Secretary and as a member of the Executive Committee of the Citizens Association in 1965, he was the official custodian of the records and minutes of the Association and its Executive Committee, which minutes and records he delivered to the home of the Association President at the time he tendered his resignation as Secretary following his appointment to the ABC Board on August 19, 1965; (J.A. 112, 113, 296-300) and as a matter of law he is charged with knowledge of the Association's activities and official position with respect to M Street licenses, alcohol beverage matters including its formal opposition to the renewal of the license of appellant Seabright, Inc. in January 1965, at a time when Ernest E. Byrd, now a stockholder and officer of

appellant Kaycee, Inc., was a principal officer and stockholder of Seabright, Inc. (Tr. 196-197; J.A. 82, 273). The aforementioned letter of August 4th from the Citizens Association to Commissioner Tobriner was part of the official records while Mr. Wyckoff was Secretary. Also during Mr. Wyckoff's term as Secretary and member of the Executive Committee, at a meeting of the Committee which he attended and reported, the Committee voted unanimously in July 1965 (J.A. 296-298) to enter suit through Association Counsel William Greer, Esquire against the Alcoholic Beverage Control Board for issuing a license in the 3300 block of M Street, N.W. to an applicant over the protests of the Citizens Association.

Notwithstanding Mr. Wyckoff's involvement and responsibilities as a member, officer and Executive Committee member of the Citizens Association, his control of records and his participation in meetings, he on deposition and in affidavit repeatedly denied any knowledge of the Association's position on M Street license matters and on matters involving appellants herein. (J.A. 24-25, 237)

That Defendant Wyckoff was not a disinterested party in the instant cases before the Board is pointed up by the defendant-intervenor herein in filing a Statement of Points and Authorities in support of Motion to Intervene in the lower Court. Therein intervenor claimed for the Association and its members property and legal rights justifying the Association's intervention as party defendant in these cases.

Intervenor therein directed attention of the Court to:

"The close nexus between the personal welfare of members of the movant Association and the liquor dispensing operations of the Corral and Peppermint Lounge ... the relationship of the members of the movant Association who live within the neighborhood of Corral and Peppermint Lounge as defined by the Alcoholic Beverage Control Board to the controversy in this action is quite similar to that of adjoining land owners in *Wolpe v. Poretsky*, who benefited from a ruling of the Zoning Commission asking to come in on the side of the Commission in response to a suit against the Zoning Commission."

Thus, on the argument offered by the Citizens Association in support of intervention herein as a party defendant, Mr. Wyckoff, as a long time resident of the critical "neighborhood" would have a personal interest in the outcome of appellant's cases before the Board so as to warrant his disqualification, even did there not exist between Mr. Wyckoff and the very Association and its members protesting appellants' applications a lengthy community of interest. Clearly his place of residence coupled with his long standing community of interest with the Association, its members and its policies, precluded a due process hearing to the appellants when he sat upon the Board at the hearing and when he cast the deciding vote in a split decision of the Board. (J.A. 29-30, 30-32, 86-92, 93-98)

II. The Appellants Were Improperly Denied The Issuance Of Their Licenses Based Upon Decisions Unsupported By Substantial Evidence As Would Establish Any Violation Of Law Or Regulation Attributable To Appellants

The record before the Board (Tr. 90-92, 111-114, 139; J.A. 51-52, 55-56, 64) makes clear, as summarized by Captain Kennedy, Lt. Cherry, and ABC Inspector Stewart, that both appellants cooperated with the every request of these officials and that both appellants operated their establishments in an orderly and well supervised fashion, taking care to check ages of patrons.

No witness appeared at the Hearing who was alleged to have been a patron involved in any of the specific or generalized complaints of the Citizens Association witnesses. One or two statements testified to by way of hearsay by persons (who did not appear at the hearing) that they had been at the Corral prior to being apprehended were never corroborated or verified. The testimony at no time suggested that generalized complaint and/or specific complaints were of matters over which either of the plaintiffs herein had control.

The Board in making its Findings relied heavily on uncorroborated hearsay. Testimony of two or three witnesses who stated they had overheard persons being arrested state that they had been at the place of business of Seabright, Inc. (Tr. 148-150, 179; J.A. 67-68, 77) The generalized testimony of police officers on statistics of arrests in the area implicated the premises of the plaintiffs only by inferences and thus fell far short of the requirement that to constitute adequate corroboration they must lead to a logical conclusion rather than a mere inference.

In *Interstate Iron Corp. v. N.L.R.B.*, 131 F.2d 129 (7th Cir., 1942) a finding of fact based on hearsay which was supported solely by inference piled upon inference was set aside. In granting petitioner's request to set aside the finding that it had laid off workers because of union activities, the court said:

"We recognize the right . . . of the Board to draw reasonable inferences from the facts found . . . But an inference cannot be piled upon an inference, as such inferences are unreasonable and cannot be considered as substantial evidence. Such a method could be extended indefinitely until there would be no more substance to it than the soup Lincoln talked about that was "made by boiling the shadow of a pigeon that had starved to death." (at 133)

The evidence presented to the Board at the hearing does not meet the standards of substantial evidence required by law.

III. Appellants Were Improperly Denied Issuance Of Their Licenses Based On The Board's Arbitrary And Capricious Application Of The Law And The Evidence, And Its Failure To Use The Same Standards In Similar Cases

The Board in its decisions gave great weight to statistics presented showing an increased number of arrests in the area of the restaurants which extended several blocks and included the premises of numerous

other licensed establishments. The police testified that a licensed establishment could affect an increase in arrests in proportion to the number of patrons it could accommodate. (Tr. 138-139; J.A. 63-64) Since the seating capacity of the restaurant next door, the Crazy Horse at 3259 M Street, is double that of either of the appellants and since the Crazy Horse operates an establishment substantially the same as those of appellants with dancing and band it was error on the part of the Board to give significant weight to these arrest statistics in the Findings and Orders in appellants' cases and to deny their licenses based in part on these statistics, while at the same time diminishing, if not disregarding, the adverse evidentiary value of such statistics in the license application of the much larger Crazy Horse establishment, immediately next door to appellants, which the Board, faced with evidence substantially the same as in appellants' cases, chose to approve even though that licensee had been found guilty of serving minors in its premises during the preceding license year. (J.A. 104-108, 86-92, 93-98, 29-30)

The Board's consideration of the weight of the Citizen and Neighborhood protest in appellants' cases was arbitrary and capricious when compared with the consideration and weight of the Citizen and Neighborhood protest, which was of equal strength and intensity in the Crazy Horse case, even though there was not in the Crazy Horse case the same inflammatory type communication circulated by the Citizens Association so as to inflame the neighbors into a stormy protest. (Tr. 161-163; J.A. 22-23, 72) In comparing the different standard which the Board applied to evidence and to neighborhood protests in the Crazy Horse case as distinguished from appellants' cases we must note that though the three establishments are situated side by side the Board delineated a neighborhood in the Crazy Horse case significantly smaller in area than the neighborhood delineated by the Board in appellants' cases. Accordingly, it should have taken less protestants in number to have tipped the Board's scale of

justice against the Crazy Horse then in appellants' cases wherein the delineated neighborhood covered an area of several blocks more than the Crazy Horse neighborhood. (J.A. 29-30, 86-92, 93-98, 105, 107-109)

From the language of the Board's decision in the Crazy Horse case, which followed in time the decisions in the appellants' cases, it would appear the Board sought to distinguish and justify its different conclusion in Crazy Horse by a recitation in the preamble of the Crazy Horse decision relating to sociological problems and matters beyond the control and dominion of the Board. Can such an explanation truly be less applicable in the case of the appellants? The record leaves no basis for such distinction between the cases.

The Supreme Court in *Yick Wo. v. Hopkins*, 118 U.S. 356, emphasized the necessity of administrative officers avoiding illegal discriminations between persons in similar circumstances. It struck down local ordinances relating to laundries not because they were *per se* they were outside the limits of police power, but because they were applied discriminatorily by the administrative officers.

And, in *Glicker v. Michigan Liquor Control Commission*, 160 F.2d 96, this salutary doctrine was applied to a licensing situation quite similar to that in the instant case. There, the plaintiff, a liquor licensee, complained that the action against her on the charge of selling to minors was "an intentional and deliberate discrimination against the plaintiff on political grounds." The Circuit Court of Appeals, in reversing the District Court for dismissing a motion to compel Commission to renew her license said in part as follows (160 F.2d, at 100-101):

"The fact that appellant is in the liquor business does not release the state from the restrictions on its regulatory powers . . . It may authorize the state to impose more stringent regulations against those engaged in that business than are imposed against those engaged in other callings, 'but it affords no justification for discriminating between persons similarly

situated who may be, or may desire to become, engaged in that calling' (citing cases)" (Emphasis supplied).

In its decision denying appellants' licenses the Board departed from its policy of more than 30 years standing in its failure to treat appellants' applications as "renewals" of existing licenses "taking into consideration the rights attendant upon an existing license" as was still the prevailing policy of the Board in this quotation from the appellant Seabright's case in January 1965. (J.A. 275) The Board's departure from its previous practice in this respect to "renewals" of existing licenses was one on which appellants received no notice of any kind, though the new procedure was in line with the policies recommended to the District Commissioners by the Citizens Association of Georgetown at a time when Mr. Wyckoff was its Secretary and a member of its Executive Committee. (J.A. 102-103)

IV. The Action Of The Court In Granting Summary Judgment Was In Error And Was Premature Considering Posture Of The Case And The Facts At Issue

The action of the Court in this case was premature. The stage of Summary Judgment procedure is one where material factual issues are not to be resolved as it is recognized that this is a function of the Court at trial itself. This Motion was heard shortly after the Court had denied the taking of two depositions of persons connected with the appointment of one of the defendants. One of the two also testified adversely to Appellants in the administrative hearing. The depositions taken have uncovered that the member of the Board had apparently been sponsored for appointment by one who also went on record at the Hearing in opposition to license application of defendant. (Tr. 164; J.A. 72, 113, 245)

The party opposing Summary Judgment must be given a reasonable opportunity to gain access to truth particularly where the facts are largely within the knowledge and control of the moving party. (*Tobelman v. Missouri-Kansas Pipe*, 130 Fed 2d; 1016 6 Moore Federal Practice 2150.)

In addition the Motion was granted presumably without considering the facts brought out at the deposition (J.A. 116). It was granted apparently upon the limited field of the administrative record. The complexity and difficulty of the issues were recognized by the Court. (J.A. 117) The method of the approach to the proof of bias was recognized. Under the circumstances it is clear that the action of the Court in this case considering all circumstances was premature and not in conformity with Rule 56.

CONCLUSION

Appellants respectfully submit that the judgment of the lower Court should be reversed with directions to enter a preliminary injunction pending trial of the case.

Respectfully submitted,

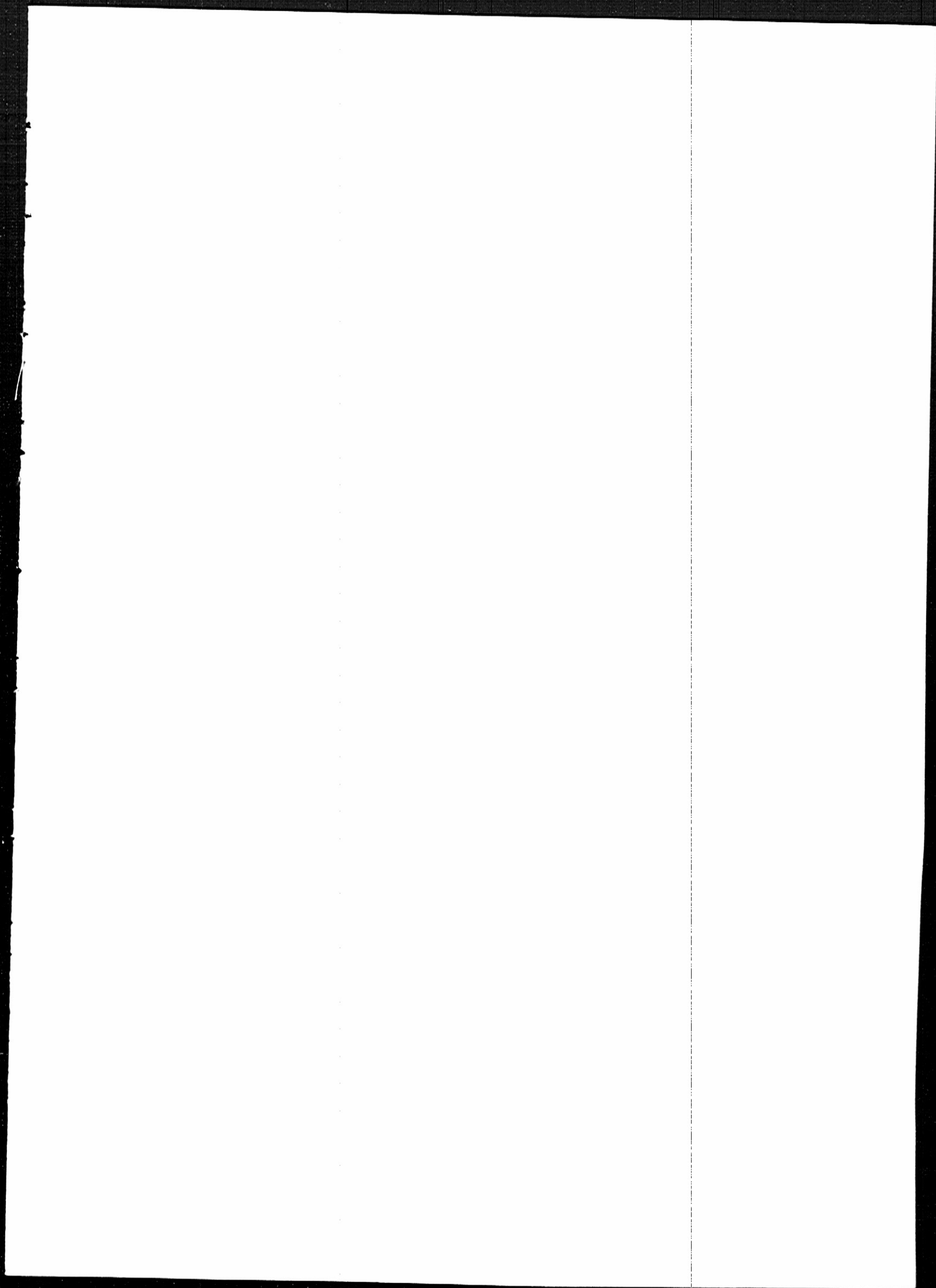
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BRIEF FOR APPELLEE
THE CITIZENS ASSOCIATION OF GEORGETOWN

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC., and SEABRIGHT, INC.,

Appellants,

v.

JOY R. SIMONSON, et al.,
Individually and Comprising
the Membership of the Alcoholic
Beverage Control Board, and
THE CITIZENS ASSOCIATION OF GEORGETOWN,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
for the District of Columbia Circuit

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(i)

STATEMENT OF QUESTIONS PRESENTED

In the opinion of Appellee The Citizens Association of Georgetown, the questions are:

1. Whether the Board rightfully imposed upon the Appellants the same standards that must be met by a new applicant for a license.

2. Whether the Board acted correctly in finding that Appellant failed to meet provisions of Section 14(a)5 regarding the wishes of those residing and owning property in the neighborhood.

3. Whether the Board and the District Court acted correctly in finding no bias or prejudice on the part of Mr. Wyckoff.

4. Whether the District Court correctly granted Appellees' motion for summary judgment, lacking any material issue of fact.

(iii)

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United States Court of Appeals

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No. 20,194

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Appellants,

v.

JOY R. SIMONSON, et al.,
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THE CITIZENS ASSOCIATION OF GEORGETOWN,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRIEF FOR APPELLEE

COUNTERSTATEMENT OF THE CASE

The Appellants, Kaycee, Inc., t/a Peppermint Lounge, located at 3263 M Street, N.W., and Seabright, Inc., t/a Corral Cafe, located at 3267 M Street, N.W., came before the Alcoholic Beverage Control Board in the District of Columbia (hereinafter referred to as the Board) for protest hearing on their applications for Class "C" Retail Alcoholic Beverage licenses for the year beginning February 1, 1966.

Appellants' applications were protested by Appellee The Citizens Association of Georgetown (hereinafter referred to as the Association), a non-profit District of Columbia corporation representing approximately 1,800 residents and property owners in the area of the city known as Georgetown.

On November 24, 1965, the first day of the hearing, Appellants made motions for a rule on the submission of written petitions and for consolidated consideration of both applications. The full hearing was then continued until November 26, 1965, because of other business. (Tr. 10, JA 40-41)

On November 26, motions were made by the Association to exclude television cameras and for admission to the record of protest communication received by the Board. (Tr. 12-15, JA 41) Thereupon Appellants filed a motion purportedly seeking the disqualification of "any member of this Board (who) participated directly or indirectly, . . . in recommending or approving" a protest against the application of Seabright, Inc., for the year beginning February 1, 1965. (Complaint, pls. ex. 2a, JA 16) The motion was not supported by an affidavit, alleged no facts in support of the request for disqualification, and named no Board member. (JA 16). Counsel for Appellants then stated that he would await a decision on the motion before determining how much evidence to proffer! (Tr. 17, JA 42)

Appellants were afforded an opportunity to argue the motion, but failed to offer any additional facts in support of the motion. (Tr. 16-17, JA 41-42) The Board then took a 36 minute recess to consider the motion. Upon the Board's return, the Chairman made the following statement:

"The members of the Board have carefully considered the motion and have ascertained from amongst their members that none of the Board directly participated in opposition to the application of Seabright, Inc., for the license year commencing February 1, 1965. Al-

though it is possible that members of the Board, as members of certain civic groups, were present when such groups concluded to file such opposition, individual Board members have no individual recollection thereof and are clear in their present conclusion that the matters now before the Board can be decided entirely upon the present record and the evidence which will be presented to the Board. *There is nothing contained in or filed with the motion to indicate prejudice on the part of any member of the Board and none is found to exist.* The motion is accordingly denied." (emphasis supplied) (JA 42-43)

Appellants then, for the first time, offered to put on testimony regarding the motion. Upon suggestion of the Association, Appellants made a proffer of the proposed testimony as follows: That in January 1965, Board member J. Bernard Wyckoff was a member and Secretary of the Association and in that capacity he gave his active support to a protest by the Association against the issuance of an A.B.C. license to Seabright, Inc., when Ernest E. Byrd was an officer and principal stockholder of the corporation; that the Association made *ex parte* communications to the Board in opposition to Appellants' current pending applications; and that the Board's official files contained communications to the Board opposing Appellants' applications from persons who are "long standing friends and who are immediate neighbors" of Mr. Wyckoff. (Tr. 21-23, JA 43-45) The Board then declined to proceed with evidence on the motion. (Tr. 23, JA 45)

Appellants thereupon filed a second motion requesting that Mr. Wyckoff remove himself from the Board because of "a genuine conflict of interest and matters of bias." The motion was accompanied by an affidavit of counsel asserting essentially the same matters set forth in his proffer of proof. (Complaint, pls. ex. 26, JA 17, 45)

After conferring with the other members of the Board, the Chairman stated that the motion and affidavit had been considered by the Board and that the second motion was denied. (Tr. 23-24, JA 46)

Later the same day, the President of the Association, Captain Peter Belin, submitted an affidavit stating that Mr. Wyckoff had become Secretary of the Association in May 1965, and had resigned from that office upon his appointment to the Board. (JA 23-24)

After closing argument on November 29, 1965, Appellants submitted yet a third document, entitled "Supplemental Supporting Affidavit," certified to by counsel for Appellants. This affidavit stated, in substance, that Mr. Wyckoff was on record as having indicated his support to the formal opposition by the Association to the application of Seabright, Inc., in January 1965. The affidavit referred to a news report which appeared in the *Washington Post* of August 20, 1965. The affidavit had attached a news bulletin and flyer concerning the Appellants, which the Association mailed to all of its members on or about November 18 or 19, 1965. It also reiterated the information adduced by Appellants on cross examination of Captain Belin (Tr. 161-163), where it was stated that the material was mailed to all members of the Association, probably including Mr. Wyckoff. (Complaint, pls. ex. 4, JA 21-23)

On December 7, 1965, the Board reopened the hearing of Appellants' applications. Memoranda of law were submitted to the Board by both parties. In addition, Mr. Wyckoff submitted an affidavit stating that he had been a resident of Georgetown since 1922, and had joined the Association several years ago. He stated that he had been Chairman of the Parks Committee and was elected on May 10, 1965, to the office of Secretary of the Association. Upon receiving the appointment to the Board, Mr. Wyckoff stated that he immediately resigned from his offices and from active membership in the Association and no longer attended its meetings. He stated that he was still on the mailing list of the Association and received all correspondence mailed to the membership at large. He said he had no independent recollection of ever taking part in the Association's opposition to prior applications filed on behalf of the Appellants, although he stated that he might have been

present at general membership meetings in 1964 or 1965 when such matters may have been discussed. He could not recall, however, what took place at those meetings. He did not know the individuals associated with the Appellants, and did not know until the present hearing that Mr. Ernest E. Byrd was a principal stockholder and officer of Seabright, Inc. He stated that on August 20, 1965, the *Washington Post* published an article stating that he was "a vocal opponent of numerous liquor license applications in the M Street area." That statement was corrected in the same newspaper the next day when it was stated that he was a member of an Association "which is a vocal opponent of said applications." The pertinent articles were attached to his affidavit. Mr. Wyckoff stated that he had formed no bias concerning the Appellants for any reason whatsoever, and stated that he would decide the merits of the applications upon the facts presented to the Board which are contained in the administrative record and upon the prevailing law. (JA 24-29)

The Chairman of the Board then pointed out the importance of a three-member Board for the orderly disposition of applications and that the Board was convinced individually and jointly that there was no bias or prejudice present in any of its members. (Tr. 288-298, JA *)

The Chairman then announced that the Board had not begun any consideration of the case and would withhold consideration of the case for one week to allow the Appellants to take court action on the matter of disqualification. Counsel for Appellants then stated that he had "no intention of going to court at this time on this matter." (Tr. 289, JA *) The Chairman then stated that the record was closed. (Tr. 289, JA *)

* This portion of the record was designated by Appellees to be included in the Joint Appendix, but was omitted from the printed Joint Appendix because of printer's error.

When testimony began before the Board on November 26, 1965, the Board, with consent of counsel, permitted the consolidation of testimony so that each witness could, if so desired, testify concerning both Appellants. (Tr. 25-26) Counsel then stipulated that Appellants' premises were zoned C-2 (community business center), which zoning was bounded on the North by R-3 (single family residence, row dwelling). (Tr. 26-28)

Mrs. Phyllis C. Ben Kahla, President of Kaycee, Inc., testified that she, her husband, Ahmed Ben Kahla, and Mr. Mohammed Aniba, had operated a restaurant under the name of Cous-Cous, specializing in Arabic food. (Tr. 36, JA 48) On June 18, 1965, Mr. Ernest E. Byrd purchased Mr. Aniba's interest in the corporation, and soon thereafter the name of the establishment was changed to the Peppermint Lounge. (Tr. 33, JA 47) After a bomb scare the restaurant was forced to experiment with different types of entertainment to attract patronage. Rock and roll proved to be the most popular. (Tr. 42-43, JA 48) She stated that she had attended meeting of the Georgetown Alcoholic Beverage Association for the purpose of problems common to the restaurant owners in the area, such as noise and parking. (Tr. 30-31)

Mrs. Ben Kahla testified that they maintained a strict disciplinary policy on the premises, but "naturally we could not control the sidewalk." (Tr. 44, JA 48) Anyone who offered any trouble was escorted from the premises.

Mrs. Ben Kahla said the corporation spent "a bit of money" sound-proofing the premises, which consisted of extra walls and paneling. (Tr. 44, 60, JA 48) When asked how many persons the Peppermint Lounge serves on an average weekend night, she replied that "I deal with dollars, not people." (Tr. 47) She also testified that she did not know the relationship between the gross income from food and from the sale of alcoholic beverages. (Tr. 55) She estimated that the capacity of the establishment was 84 upstairs and 90 downstairs. (Tr. 46, JA 49) She

said that no parking facilities were provided by the establishment for its patrons. (Tr. 60, JA 49)

Mr. Ernest E. Byrd testified that he was the principal stockholder and an officer of both Kaycee, Inc., and Seabright, Inc. He stated that Seabright, Inc. was cited once during the year for non-payment of liquor bills, because sometimes we get "stuck with \$10,000 or \$15,000 worth of whiskey in our basement." (Tr. 211, JA 83) He testified as to his efforts to sell food in his establishment and to his attempts to sound-proof the premises, for which he spent \$500. (Tr. 201-203, 204-205, JA 83) He testified that his monthly gross income from food was less than that from the sale of alcoholic beverages. (Tr. 208, JA 83) He testified that his rated capacity in the Corral Cafe was 75 on each floor, but that depending on the circumstances he might serve as few as 50 or as many as 300 to 400 patrons. (Tr. 212, JA 84) The downstairs room is named "The Frog." The band that plays there is called "The Creatures," and the band upstairs, "The Roaches." (Tr. 213, JA 84) The music they play is electronically amplified and the speakers are sometimes placed against the front window. (Tr. 214, JA 85) According to Mr. Byrd, this causes "a soft aroma of music" that can be heard outside the premises. (Tr. 214, JA 85)

The food sales of the Corral Cafe between February 3, 1965 and February 6, 1963, were \$117.45, as opposed to alcoholic beverage sales for the same period of \$1,364.25. (Tr. 193, JA 81-82) Both establishments charge an admission of 50 cents on weekdays and \$1.00 on weekends. (Tr. 213, JA 49, 84)

Mr. Philip K. Robinson, Chairman of the Licensing Committee of the Association, was called as a witness by the Appellants. He testified that a meeting was held with certain restaurant owners and members of the Association. The meeting was not successful in clearing up the complaints of the local residents, which were concerning noise,

nuisances committed on doorsteps, fights in the streets and cars with loud mufflers. (Tr. 63-72, JA 49)

A young single girl from England testified that she found the Peppermint Lounge orderly and that rock and roll was "the music I want to hear." (Tr. 72-77, JA 50) A gentleman who has known Mrs. Ben Kahla since she was eight years old, testified that the Peppermint Lounge was orderly and well-run. (Tr. 101, JA 53-54) Mr. Mouldi Bergaoui, who is from Tunisia and an announcer with the Voice of America, said the Peppermint Lounge was the only place Cous-Cous could be purchased in Washington and that it was the only place he could take his friends. (Tr. 115-117, JA 57)

Mr. Ralph L. Stewart, an inspector for the Board, testified that Kaycee, Inc., was well supervised according to his observations, as was Seabright, Inc. His observations were based on two visits over the preceding year. (Tr. 110-114, JA 56)

By stipulation between counsel, it was agreed and entered into evidence that that both the men's and ladies' restrooms in both the Peppermint Lounge and the Corral Cafe contained coin-operated vending machines dispensing prophylactics, and that the restroom for men in each establishment contained a coin-operated vending machine dispensing a cream called "De-La", which was intended for use as a desensitizing agent during sexual relations. Also stipulated to was a Board order permitting the sale of prophylactics from vending machines in establishments holding A.B.C. licenses. (Tr. 102-109, 118-120, JA 54-55, 57-58)

For the Protestant Association, Mr. Don V. Harris, Jr., an attorney who lives at 3330 N Street, N.W., testified that his home has been the target of several acts of vandalism during the past year. One time a brick was thrown through his dining room window, gouging the dining room table and breaking a Steuben candelabrum. His garage and third

floor windows have also been broken and outside lights have been broken and stolen and his hedges have been broken. All but one incident took place on a Saturday night. Early Saturday evening there is "a large influx of automobiles" into his neighborhood. The occupants, who are usually in their teens and twenties, then head South to M Street. The return between 11:00 p.m. and midnight in a "somewhat more exuberant" condition. Mr. Harris stated he had lived in Georgetown for 19 years and the vandalism had started on February 1, 1965. (Tr. 122-129, JA 59-61)

Dan B. Kennedy of the Metropolitan Police Department, Captain of the Seventh Precinct, testified that in the months of June and July, arrests along a five block stretch of M Street for disorderly conduct, drunkenness, drinking in public and urinating in public were 139 in 1965, versus 88 in 1964, an increase of 57.8%. These figures were reported for the hours between 6:00 p.m. and 3:00 a.m. From his observations, Captain Kennedy stated that the majority of patrons range from 18 to 25 years of age. He stated that he has requested the narcotics squad, the morals division, the women's bureau and the youth aid division to make periodic visits to the establishments in question. Parking creates a major problem in Georgetown, Captain Kennedy testified. He said that on Friday and Saturday nights, the Police Department has three cranes in Number Seven Precinct to remove illegally parked cars. They have removed as many as fifty on these nights and that as soon as one car is removed another takes its place. He said the problem of intoxication on the streets of Georgetown is primarily restricted to the young. (Tr. 130-139, JA 61-63)

Lt. Dwayne A. Cherry of the Seventh Precinct testified that he had personally answered complaints from residents in the area of Appellants' premises. He said the complaints related to depredation committed to private property, public urination, prowlers, fights, indecent sex acts committed in parked autos, and many complaints of illegally

parked autos. He said that he had spoken to Mr. Byrd about noise emanating from his premises and congestion on the sidewalk adjacent to the premises. Lt. Cherry said that "the atmosphere created by the type of music that's conducted on the premises seems to stimulate a certain segment of our society who are drawn to these establishments and create indirectly a police problem." (Tr. 144-146, JA 65-67) He said that trying to solve the "intolerable" parking problem during the weekends is "somewhat like trying to keep the river away from the shore with a broom."

Pvt. Robert J. Snyder of the Metropolitan Police Department has been assigned to the Seventh Precinct for the past 20 years and is a foot patrolman assigned to the beat covering the 3200 Block of M Street. He testified that in the past two months he had arrested in the 3200 Block, two people for urinating in public, one for drunk and one for disorderly conduct. (Tr. 148, JA 67) He testified that the two individuals he had arrested for urinating openly on heavily traveled M Street told him they had just come from the Corral Cafe and could not use the toilet. (Tr. 148, JA 67-68) He said that he made more arrests in the 3200 Block than in any other block in Georgetown. He stated that until the time the windows were painted over in both establishments, he had a problem of congestion on the sidewalk in front of the two premises. The attraction in both places were bikini-clad females doing "this new modern dance." He testified that on numerous occasions he had asked those operating the Corral Cafe and Peppermint Lounge to close their doors. He said that "when the door is open you can hear the noise all the way to K Street, which is two blocks away." He stated that the parking situation was so bad that "you can't even find an illegal place to park." (Tr. 147-153, JA 69-70)

Captain Peter Belin, President of the Association, testified that from his personal observation that the greatest crowds on the sidewalks are directly outside the establishments before the Board. He

said the necessity for increased police patrol of the M Street area had deprived the residents and businessmen of Georgetown of otherwise available police protection. On cross examination, counsel for Appellants questioned Captain Belin concerning publications sent to the membership of the Association and to a member of the Board. (Tr. 156-164, JA 72)

Mrs. Polly Shackleton testified that the type of restaurant represented by those before the Board was deleterious to the area. (Tr. 164-166, JA 71-72)

Mr. Alvin Harper of 1219 35th Street, N.W., testified that he and his wife obtained 138 signatures and received only four refusals. He stated that he and two of his neighbors have had their fences damaged, one neighbor having his fence ripped out three times. He said that he and his neighbors are faced with the most obscene, vulgar gutter language from patrons of the M Street establishments. (Tr. 170-171, JA 73-74)

Mr. Samuel M. Levy, who resides at 3245 N Street, N.W., has been a resident of Georgetown for 52 years and has had a men's clothing shop on M Street for the past 34 years. He stated that he owned considerable commercial property in the Georgetown area. Mr. Levy testified that six weeks before the hearing on a Saturday night he was walking on M Street. As he reached the 3200 Block, his attention was directed to a fight in the middle of M Street, directly in front of both establishments. One man was down on the street and the other was kicking him. A policeman intervened and disarmed the man on the ground who had a pistol. (Tr. 177, JA 75-76) A week later, about midnight on a Saturday night, Mr. Levy and his wife returned home and found four young men relieving themselves in the parking area in the rear of their house. When the police arrived to arrest the boys, one of them stated that they had been at the Corral Cafe and that the men's room was so crowded that he couldn't get in. (Tr. 179, JA 76-77) Mr.

Levy also testified as to the recent difficulty in renting commercial property in the M Street area. He said that he owned property in the area that was rented to a restaurant. He said that if he had his choice today, he would not rent to any Class "C" establishment. (Tr. 182, JA 78)

Mr. Herbert Kunde of 1220 Potomac Street, N.W., which is one-half block from the M Street establishments, stated that his home was zoned residential. He testified that on many occasions he has witnessed instances of public urination, drunkenness, and vandalism. He has seen cars parked on the sidewalk, groups trying to rip out parking signs and numerous fights. On one occasion a youngster asked Mr. Kunde, "Old man, what are you doing there," and then threatened him if he did not shake hands. He was also threatened by a young man who crashed into his patio and stated that "Even when I'm drunk no one can treat me this way." (Tr. 187-188, JA 79-81) He stated that several residents in the area were forced to hire a special policeman for protection. (Tr. 189-190, JA 81)

The Board also considered on behalf of the Protestants, formal protest petitions signed by 275 property owners and residents of Georgetown, 152 letters of protest and 169 telegrams from Georgetown residents. In addition, 92 individuals signed at the hearing in protest to the issuance of the license. (Findings of Fact, 86-91, JA 93-98)

A consent petition signed by 32 individuals, none residing in Georgetown, was also considered by the Board, as were 176 consent telegrams with near identical wording. At the hearing, 33 persons signed in support of Appellants' applications. Few of the 33 were from Georgetown. (Findings of Fact, JA 86, 93)

On December 28, 1965, the Board issued Findings of Fact and Conclusions of Law denying both Appellants' applications, Board member James G. Tyson dissenting. The Board found as follows:

"That the requirements of Sections 14(a)(5) of the Act have not been met as proved by the widespread and intense opposition of 'the persons residing or owning property in the neighborhood of the premises for which the license is desired.'"
(Findings of Fact, JA 91, 98)

After denial of their applications by the Board, Appellants filed a Complaint in the United States District Court for the District of Columbia seeking injunctive relief from the order of the Board. In their Complaint, Appellants reiterated their claims of bias and *ex parte* contacts concerning Mr. Wyckoff and alleged that there was insufficient evidence to support the denial of Appellant's applications and that the action of the Board was arbitrary and capricious. (JA 4-14)

The District Court issued a Temporary Restraining Order allowing Appellants to continue selling alcoholic beverages during the pendency of the litigation below. The Association was allowed to intervene as a party defendant.

The Court allowed Appellants to take depositions of Mr. Wyckoff and the President of the Association on the bias question. Appellant's request to depose District Commissioner Walter N. Tobriner and Mrs. Polly Shackleton on the same issue was denied by the Court.

The depositions were taken before the Court on March 11 and 14, 1966. The deposition of Mr. Wyckoff showed, in sum, that Mr. Wyckoff lives about three and one-half blocks North of Appellants' premises. He attended three or four of the monthly meetings of the Association each year. In the Spring of 1965, he was elected Secretary of the Association, but never attended a general meeting in that capacity. (Tr. 13, JA 236) He did attend two executive committee meetings as Secretary, but had little or no recollection of what transpired at those meetings. (Tr. 14, JA 236) He knew only the Chairman of the Licenses Committee of the Association, but had infrequent contacts with him. (Tr. 18, JA 237)

After he became Secretary of the Association, Mr. Wyckoff became aware of the general policy of the Association regarding restaurants on M Street, but did not know the policy concerning any specific establishment, including that of the Appellants. (Tr. 22-23, JA 238) He testified that he took no action whatsoever to further his appointment to the Board (Tr. 29, JA 239), nor his subsequent reappointment to a full term. (Tr. 55, JA 240) Of the witnesses that appeared before the Board, Mr. Wyckoff knew only Mr. Samuel Levy. (Tr. 47, JA 239) He testified that he had no conversations with Captain Belin or Mrs. Shackleton from the time of his appointment to the Board. (Tr. 59-60, JA 240-241) He testified that he may have received the Association newsletter, but did not remember reading them. He testified that he did receive an anonymous letter concerning another applicant, whose license he voted to issue.

On March 14, 1966, Mr. Wyckoff testified that he remembered receiving one communication from the Association concerning the Appellants. When he received this matter, he took it to the A.B.C. Board and gave it to the Executive Secretary, Mrs. Dorothy Albert, for filing. (Tr. 85) He stated he was present at an executive committee meeting when an M Street restaurant called the Steak Pitt was discussed, but did not recall the context. (Tr. 86-87, JA 246) He stated he knew nothing of the position of the Association toward the application of Seabright, Inc., in January 1965, probably because he was away during that month. (Tr. 94, JA 248)

Mr. Wyckoff was also questioned by the Court about two applications he voted to grant that were opposed by the Association. (Tr. 106-109, JA 248-249) The Court then asked Mr. Wyckoff:

"Has anyone, to your knowledge, ever tried to influence you in any decision or judgment that you might be called upon to reach in connection with any application that you voted for or against?" (Tr. 109, JA 249)

Mr. Wyckoff answered, No. (Tr. 109, JA 249)

On deposition Captain Peter Belin testified that Mr. Wyckoff was present at the June and July 1965 executive committee meetings of the Association. (Tr. 14, JA 113) At the July 1965 executive committee meeting it was decided to institute a legal action against the A.B.C. Board concerning the issuance of a license to a restaurant called the Steak Pitt. Mr. Wyckoff was present at that meeting. (Tr. 26-27, JA 113)

The case was heard on Appellants' motion for preliminary injunction and Appellees' motion for summary judgment. Appellees introduced the administrative record before the A.B.C. Board.

At the conclusion of the hearing on the two motions, the District Court granted Appellees' motion for summary judgment and dismissed Appellants' motion for preliminary injunction. The Court entered a stay of the order pending the disposition of this appeal. The Notice of appeal was filed in this case on April 11, 1966.

STATUTES INVOLVED

Section 25-103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

* * *

(f) The word "Board" shall mean the Alcoholic Beverage Control Board created by this chapter.

* * *

(h) The word "Commissioners" shall mean the Commissioners of the District of Columbia.

(i) The word "District" shall mean the District of Columbia.

* * *

(l) The word "meals" means the usual assortment of foods commonly ordered at various hours of

the day: and such food and victuals as sandwiches and salads shall not be regarded as a "meal."

* * *

(n) The word "restaurant" means a suitable space in a suitable building, approved by the Board, including such suitable space outside of the building and adjoining it as may be approved by the Board, kept, used, maintained, advertised, or held out to the public to be a place where meals are served, such space being provided with such adequate kitchen and dining-room equipment and capacity, and having employed therein such number and kinds of employees for preparing, cooking, and serving meals for its guests as shall satisfy the Board that such space is intended for use primarily as a place for preparing, cooking, and serving meals, and that the chief source of revenue to be derived from the operation of such place shall be from the preparation, cooking, and serving of meals and not from the sale of beverages. No such space shall be considered suitable if any business is conducted therein other than the preparation, cooking, and serving of meals, except such a business as is incidental to a bona fide restaurant.

* * *

(Jan. 24, 1934, 48 Stat. 319, ch. 4, § 3; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 1.)

* * *

**Section 25-104. — Alcoholic Beverage Control Board —
Appointment — Term — Employees.**

The Commissioners of the District of Columbia shall appoint a Board of three persons, subject to removal by the Commissioners, to be called the "Alcoholic Beverage Control Board," each of the members of which shall be a citizen of the United States and a resident of the District of Columbia for at least three years immediately preceding his appointment and have during that period claimed residence nowhere else. Of the three persons first appointed as members of said Board,

one shall be appointed for two years, one for three years, and one for four years, and thereafter all appointments shall be for the term of four years, except such appointments as may be made for the remainder of unexpired terms. Vacancies caused by death, resignation, or otherwise shall be filled by the Commissioners only for the unexpired terms. Members shall be eligible for reappointment. The Commissioners shall designate one of the members of the Board to be chairman thereof. The Commissioners are authorized to employ such other personal services, including three additional assistant corporation counsel, as may be necessary to carry out the provisions of this chapter, and to provide for the expenses of the Board. The salaries of employees, other than members of the Board, shall be fixed in accordance with the provisions of the Classification Act of 1949, as amended. The Commissioners shall include in their annual estimates such amounts as may be required for the salaries and expenses herein authorized. (Jan. 24, 1934, 48 Stat. 321, ch. 4, § 4; Apr. 20, 1948, 62 Stat. 176, ch. 217, § 2; Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a).)

**Section 25-106. Jurisdiction of Board over licenses —
Appeal from revocation — Duties.**

The right, power, and jurisdiction to issue, transfer, revoke, and suspend all licenses under this chapter shall be vested solely in the Board, and the action of the Board on any question of fact shall be final and conclusive; except that, in case a license is revoked or is suspended for a period of more than thirty days by the Board, the licensee may, within ten days after the order of revocation, or the order of suspension for a period of more than thirty days is entered, appeal in writing to the Commissioners to review said action of the Board, the hearings on said appeal to be submitted either orally or in writing at the discretion of the Commissioners, and the Commissioners shall not be required to take evidence, either oral, written or documentary. The decision of the

Commissioners on any question of fact involved in such appeal shall be final and conclusive. Pending such appeal, the license shall stand suspended unless the Commissioners shall otherwise order.

The right and power shall be vested in the Board, for good cause shown, to issue permits for the sales of stocks of beverages located in the District of Columbia by individuals, corporations or associations, partnerships, executors, administrators, being owners thereof, receivers or other representatives of a court, to persons licensed under this chapter.

Said Board shall have such other authority and perform such other duties as the Commissioners may, by regulation, prescribe. (Jan. 24, 1934, 48 Stat. 322, ch. 4, § 6; Aug. 27, 1935, 49 Stat. 897, ch. 756, § 2.)

Section 25-111. License classifications — Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

* * *

(g) *Retailer's license, class C.* — Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of restaurants and passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wines shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be

sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of hotels, said beverages may be sold and served only in the private room of a registered guest or to persons seated at public tables or to assemblages of more than six individuals in a private room, when such room has been previously approved by the Board. Beer and light wines may also be sold and served to persons seated in bona fide lunch counters. And in the case of clubs, said beverages may be sold and served in the private room of a member or guest of a member, or to persons seated at tables. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, \$825 per annum: ***

Section 25-115. Applications for licenses — Qualification of applicants — Moral character — Citizenship — Prior convictions — Ownership — Interest of manufacturer in retail business — Character of premises — Advertising application — Hearing of protests — Objection of property owners — Removal of bonded liquor from Government warehouses — Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is a citizen of the United States, not less than twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

4. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase

beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

(b) Before granting a license under section 25 - 111(l) or a retailer's license, except a retailer's license class E or class F, the Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation published in the District of Columbia. The advertisement so published shall contain the name of the applicant and a description by street and number, or other plain designation, of the particular location for which the license is requested and the class of license desired. Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing. There shall also be posted by the Board a notice, in a conspicuous place, on the outside of the premises. This notice shall state that remonstrants are entitled to be heard before the granting of such license and shall name the same time and place for such hearing as set out in the public advertisement; and, if remonstrance against the granting of such license is filed, no final action shall be taken by the Board until the remonstrant shall have had an opportunity to be heard, under rules and regulations prescribed by said Board. Any person wilfully removing, obliterating, marring, or defacing said notice shall

be deemed guilty of a violation of this chapter. The provisions of this subsection relating to notice by advertisement in some newspaper of general circulation shall not apply to the issuance of a license to a retailer for any place of business if such retailer is the holder of a license of the same class for the same place and if said last-mentioned license is in effect on the date the application for the new license is filed.

(c) Except in the case of a retailer's license class C or class D or a license issued under section 25-111(l) to be issued for a hotel or club or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a license: *Provided, however,* That none of the provisions of this chapter shall prevent the Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use

on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided*, That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter.

(d) A separate application shall be filed with respect to each place of business, except that a company engaged in interstate commerce may file one application for a license for the operation thereunder of all of its dining, club, and lounge cars operated on railroads within the District of Columbia. The required license fee shall be paid to the collector of taxes and his duplicate receipt shall accompany the application for license. In the event the license is denied the fee shall be returned. Every such application shall be verified by the affidavit of the applicant, if an individual, or by all of the members of a partnership, or by the president or vice president of a corporation. If any false statement is knowingly made in such application, or in any accompanying statement under oath which may be required by the Commissioners or the Board, the person making the same shall be deemed guilty of perjury. The making of a false statement in any such application, or in any such accompanying statement, whether made with or without the knowledge or consent of the applicant, shall, in the discretion of the Board, constitute sufficient cause for the revocation of the license. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 14; Aug. 25, 1937, 50 Stat. 802, 803, ch. 766, §§ 1, 2; June 15, 1938, 52 Stat. 691.)

SUMMARY OF ARGUMENT

1. Contrary to Appellants' contention, no property right attaches to a license for the sale of alcoholic beverages under existing law in the District of Columbia. Thus applicants seeking reissuance of an existing license must meet the same standards as an applicant for an

original license. This principle is of long-standing effect in this jurisdiction, and is not, as Appellants claim, a departure from established law.

2. Every applicant for an A.B.C. license has the burden of convincing the Board that the place for which the license is appropriate considering: 1.) the character of the premises; 2.) its surroundings; and 3.) the wishes of those residing or owning property in the neighborhood. Appellants failed to meet these criteria and their licenses were rightfully denied.

3. Appellants failed to make any showing of bias or prejudice on the part of Board member Wyckoff despite abundant opportunity to do so before the Board and the District Court. Appellants are accordingly bound by the administrative record on the issue.

4. Appellants failed to show any material issue of fact before the District Court. Thus, the grant of a motion for summary judgment in favor of Appellees was not in error.

ARGUMENT

I.

It Is the Established Law in the District of Columbia That There Is No Attendant Property Right in a Liquor License and That a Holder of an Existing License Must Meet the Same Burden as an Original Applicant in Demonstrating His Suitability To Hold Such a License

It is a well-established rule of law in the District of Columbia that a license to sell alcoholic beverages carries with it no property, contractual or natural rights, but is a privilege, granted by competent public authority pursuant to statute, to engage in a business that would otherwise be illegal. In *Clore Restaurant v. Payne*, 73 F.Supp. 677 (D. D.C. 1947), it was held that

"It may be conceded at once that the liquor business is not one in which a person has a natural right to

engage because it is potentially dangerous to the community. It may also be conceded that there is a wide difference between the discretion reposed in and exercised by a board having jurisdiction to issue a license for the sale of alcoholic beverages and that which is vested in a board to license callings in which one has a vested right to engage." 73 F.Supp. at 681.¹

This quotation from *Clore* merely echoes the almost universal principle of other jurisdictions. See the abundant authority cited in 48 C.J.S. 223 (§ 99); 30 Am. Jur. 602, 603 (§ 2); 2 A.L.R.2d 1239, 1242.

It is settled law in the District of Columbia that the holder of an existing liquor license has no superior rights when applying for a new license, at least as against the interest of the general public, merely because he has previously held a license. Both the Alcoholic Beverage Control Act (Title 25, D.C. Code) and its interpretation by the courts in this jurisdiction clearly show that the position of an applicant for a liquor license is not improved because he has been granted one in the past. This rule was clearly defined in the case of *Minkoff v. Payne*, 93 U.S. App. D.C. 123, 127, 210 F.2d 689, 693 (1953), where it was held:

"We see no escape from the conclusion that the same qualifications required for an original license remain for (Alcoholic Beverage Control) Board consideration as recurring applications for renewals or new licenses are made."

In reaching this conclusion, Judge Fahy wrote that the intent of Congress that the procedure and criteria for reissuance of an Alcoholic Beverage Control license should be the same as an original application was demonstrated by the only two exceptions to this rule in the Act. Section 14(b) of the Act (D.C. Code § 25-115(b)) excuses publica-

¹ Cf. *Curry v. District of Columbia*, 14 App. D.C. 423 (1899).

tion requirements when an existing license is in effect on the date of an application for a new license. The other exception, in Section 14(c) of the Act (D.C. Code § 25-115(c)) concerns objections by real estate owners within 600 feet of the premises to be licensed. Considering these exceptions, the Court stated:

"That no other exception is made in their favor indicates that in other respects proceedings for renewal should conform with those for an original application." 210 F.2d at 693.

It is an elementary rule of statutory construction that where specific exemptions have been made in some parts of the statute other exemptions will not be implied. It is significant that nowhere in the A.B.C. Act does the word "renewal" even appear.

Appellants claim that this interpretation is a sudden departure from some 30 years of precedent by the Board. This is nonsense. The Board has consistently adhered to the position that a "renewal" should be treated the same as an original application. During hearings before Congress in 1962, Mr. Weakly, a former Chairman of the Board, indicated the legal nature of these applications:

Mr. Multer: "Do your renewal applications take much less time (than original application)?

Mr. Weakly: "Yes, they do. . . . But if we could effect our renewals, so-called renewals -- I say that because our counsel has always indicated that each of these licenses is a brand-new license . . ." ²

The Corporation Counsel in 1934, William W. Bride, testified concerning the 1934 A.B.C. Act as follows:

² Hearings before Subcommittee No. 4 of the House Committee on the District of Columbia concerning H.R. 9808 (87th Cong., 2nd Sess.) March 22 - May 31, 1962.

"... these licenses are issued merely for one year, and the same procedure to procure a license must be followed at the end of the year as was taken in the very first instance."³

Appellants claim that they were taken by surprise by such an extraordinary application of the Act are without foundation. All their experienced counsel had to do is look at annotation No. 5 on page 1093 of the D.C. Code, 1961 edition, where *Minkoff v. Payne, supra*, is cited.

Appellants have made much of the different procedural distinctions the Board makes between original applications and applications by an existing licensee. These distinctions, such as different applications, placards, etc., should be considered in their true light: procedural conveniences for the Board with the purpose of easing the heavy annual workload, not as binding legal precedent, as Appellants seem to assert.

Again, Appellants claim that the Board did not take into consideration the financial investments and obligations an existing licensee has in his premises. The record is replete with testimony concerning cost of improvements, soundproofing, employees, etc., and the Board specifically makes mention of such matter in its Finding of Fact on the application of Seabright, Inc. (JA 94)

The Appellants also assert that since this is the first time in 32 years that the A.B.C. Board has denied an application for a license from an existing licensee that there must be something wrong with this practice. The obvious answer is that this Board need not be bound by the possibility that former boards made an overly cursory examination of the applications of existing licensees. A more satisfying suggestion is that perhaps these Appellants are the worst in 32 years.

³ Testimony before Joint House and Senate District Committee on H.R. 6181, January 5-6, 1934, pp. 44-47 of the printed report of the hearings.

II.

**There Was Abundant and Substantial Evidence
To Support the Denial of Appellants' Licenses**

Appellants' licenses were denied because they failed to carry their burden of demonstrating that the issuance of their license was proper under Section 14(a)5 of the A.B.C. Act (D.C. Code § 25-115(a)5). This section provides:

"Before a license is issued the Board shall satisfy itself. . ."

* * *

"5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

The depth of opposition to the premises from residents of the neighborhood of the Appellants premises was clearly shown in the proceedings before the Board.

In the case of Kaycee, Inc., formal protests signed by 275 owners, residents or occupants were received by the Board. Also noted were 152 letters and 169 telegrams in opposition to the Kaycee application. At the hearing 92 individuals, almost all Georgetown residents, signed in protest against the license. (JA 86)

In the case of Seabright, Inc., 271 persons signed the protest petitions and 152 letters and 169 telegrams were received in opposition. Ninety-two people signed in protest at the hearing. (JA 93)

In the case of both Appellants, the Board stated in its Findings that:

"A consent petition signed by 32 residents of Washington or its suburbs, none living in Georgetown,

was received. One hundred seventy-six consent telegrams were received early on the day of the hearing from a variety of addresses, the majority of them outside Georgetown. The telegrams were identical in wording and arrived shortly before the hour set for the opening of the hearing, at which time the applicant's attorney requested and obtained a Board ruling that no communications received subsequently would be included in the record even though the hearing was continued until November 26, 1965.

* * *

"... Thirty-three persons, very few from the area, signed up to support the application." (JA 86, 93)

In the application of the *Mug, Inc.* (decided March 31, 1965), the Board granted a license to an establishment in the face of strong neighborhood opposition.

The issuance of the license was appealed to the United States District Court for the District of Columbia, and on July 14, 1965, Judge Burnita Shelton Matthews ruled:

"One of the requirements of the applicable statute is that the A.B.C. Board satisfy itself of the 'wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.' Property owners and residents in the neighborhood of the mentioned premises made their wishes known to the A.B.C. Board -- they objected strenuously to the granting of the application. They gave various reasons for their opposition. So far as the record shows not one property owner or resident in such neighborhood favored the granting of the application. It is clearly manifest that 'the wishes of the persons residing or owning property in the neighborhood' of said premises were that the application be denied.

"The premises involved -- 7612 Georgia Avenue -- is zoned commercial as is other property on that avenue. But the above mentioned statute requires that 'its surroundings' be considered and undoubtedly the evidence establishes that 'its surroundings' are primarily residential.

"Taking into consideration the record as a whole, it is the view of this court that the findings of the A.B.C. Board are so unsupported by the evidence as to be unwarranted as a matter of law." *Seaboard Realty, Inc. v. ABC Board*, (Civil Action 1117-65, United States District Court for the District of Columbia, decided July 14, 1965.)

In testifying in favor of the A.B.C. Act before Congress, the former Corporation Counsel, William W. Bride, a drafter of the Act, stated:

"We feel that the people who live in the neighborhood should be the judge of whether or not they want licenses to be issued in that locality, and if you have a requirement under that condition a man might be able to slip through a license, but if you have the provision to that this remonstrance must be given the opportunity to be heard before the license is granted, it seems to me that you have an excellent check upon the character of the individual and whether or not a license place should be located in the particular place mentioned." Joint Hearings before the Committee on the District of Columbia on H.R. 6148 and 6181, January 5-6, 1934, 73rd Cong., 2nd Sess., p. 79.

Indeed, there is a practical reason why protests on renewals should be given even more weight. An applicant for an original license may misrepresent the type of operation he intends, in order to avoid neighborhood opposition, or he may, in complete good faith, change the nature of his establishment after it has operated for a time, or sell the

business to new interests who make objectionable changes. Consequently, after an establishment has been in actual operation, residents of the neighborhood can judge for themselves the effect the establishment has on their neighborhood and are in a much better position to take a rational and informed position as to the question of opposition.

The Board in these cases, however, relied on far more than the mere wishes of the neighborhood. There was impressive evidence of an increase in crime in the immediate area and a number of incidents were traced to the Appellants' patrons. Admittedly, some of the statements were hearsay, and significantly the Board recognized that the hearsay in this case could be based upon other substantial evidence. The Board, in its Findings, cited *Willapoint Oysters v. Ewing*, 174 F. 2d 676, 690-691 (9th Cir. 1949), in which it was held that "... findings cannot be based upon hearsay alone, nor hearsay corroborated by a mere scintilla The test . . . is whether . . . there is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." The Board went on to state that "the testimony outlined above from residents and from police is far more than 'a mere scintilla' and is more than sufficient to convince a reasonable mind."

Thus the case of *Interstate Iron Corp. v. National Labor Relations Board*, 131 F.2d 129 (7th Cir. 1942), is inapposite.

Appellants argue that there are a number of other Class "C" establishments in the area and the increase in crime was attributable to those other establishments as well as to themselves. This argument basically comes down to the assertion that when matters have deteriorated to a sufficient level, nothing can be done about it because a number of sources contribute. The argument is as logically unsound as it is practically ridiculous.

Appellants also suggest that the Board was arbitrary to deny their

license and to grant the license of the Crazy Horse restaurant. They pick out certain similarities from the record and ignore the dissimilarities. Since the administrative record on the Crazy Horse application is not before this Court, it is impossible to make an argument pro or con on this matter and it would be an exercise in futility to do so.

In addition to the evidence on increased crime, there was substantial evidence to show that the Appellants did not meet the criteria of Section 14(a)5. An inspection report for Seabright showed that during a four-day period food sales were \$117.45, while alcoholic beverage sales were \$1,364.25. (JA 81-82)

Heavy turnover of patrons seems to be a characteristic of the establishments. Mr. Byrd testified that the capacity of the Corral (Seabright) was 150, yet they may serve 300 or 400 people who may "come in for one drink and leave." (Tr. 212, JA 84)

Each of the establishments charges admission and have public hall licenses. (Tr. 34, 213) The loud (Tr. 215) electronically amplified (Tr. 215) rock and roll music (Tr. 41, 42, 209) of which a "soft aroma" (Tr. 214) escapes into the street, together with extensive testimony concerning soundproofing (Tr. 44, 204-205), indicate the atmosphere was not designed for quiet dining. Other testimony concerned bikini-clad female dancers (Tr. 151), large supplies of whiskey (Tr. 211) and youthful (Tr. 131) patrons crowded outside on the sidewalks. (Tr. 150)

Both establishments offered prophylactics for sale from coin-operated vending machines in both the men's and ladies' restrooms. In addition, a cream designed as a desensitizing agent during sexual relations. (JA 55) These matters would seem to give some indication to the Board as to the character of the premises.

This Court might note that a denial of the Appellants' licenses does mean that they automatically go out of business. The Appellants could remain at their present locations as restaurants without the right to

sell liquor, or they could move to another location and reapply for a license. This is clearly unlike the situation in the *In Re Carter* cases⁴ where the applicants license to do business is revoked.

III.

Appellants Failed To Make Any Showing of Bias or Prejudice

The Appellants have completely failed to make any showing of bias or prejudice on the part of Board member Wyckoff that would require him to disqualify himself from the case.

For precedent, Appellants chiefly rely upon the case of *Jarrott v. Scrivener*, 225 F.Supp. 827 (D. D.C. 1964). It involved secret letters and conversations between certain members of the District of Columbia Board of Zoning Adjustment and high officials of the Federal Government, including the Secretary of State and the Assistant to the President for District of Columbia Affairs. Those officials requested the members of the Board to make an exception in the zoning regulations to allow the Soviet Union to build a new embassy in a residential area. The Board granted this exception over the protests of local residents. After depositions on the matter of bias in the District Court, the case was remanded for a new hearing before a specially constituted Board.

The *Jarrott* case contained four elements upon which Judge Pine based his decision to reverse:

- a.) No record was made of any of the *ex parte* contacts by any member of the Board.
- b.) No reference was made to the secret contacts by either party at the hearing.

⁴ 85 U.S. App. 229, 177 F.2d 75, *cert. denied*, sub nom. *Laws v. Carter*, 338 U.S. 900 (1949); 89 U.S. App. D.C. 310, 192 F.2d 15, *cert. denied* 342 U.S. 862 (1951). These cases involved the *revocation* of a bondsman license without a due process hearing.

- c.) The objecting residents had no knowledge whatsoever of the *ex parte* contacts during the entire hearing before the Board.
- d.) The contacts were made with the intent to influence the Board in its decision.

None of these elements were present in this case. The only communication Mr. Wyckoff recalled receiving, he immediately took to the A.B.C. Board and asked the Executive Secretary to place it in the files. Indeed, the communications Appellants claim were secret *ex parte* contacts were in the nature of public bulletins, mailed openly to 1,800 members of the Association.

Counsel made continual reference during the hearing to matters that were contained in the communication Appellants claim to be so objectionable. This communication, which was mailed three or four days before the hearing (JA 72), was referred to when counsel for Appellants made reference to "rotten apples" at various stages of the hearing. (JA 72) This communication was also attached to one of the affidavits counsel for Appellants filed with the Board. (JA 22-23) It is clear from the record that Appellants had full knowledge of all communications received by Mr. Wyckoff from the Association and made full use of it at the hearing.

Any communication received by Mr. Wyckoff from the Association was received solely because he remained on the Association mailing list, and not with any intent to influence his decision. According to Mr. Wyckoff's affidavit, these mailings made no impression on him and failed to influence his decision. They could have no more effect upon the Board than the various articles that appeared in the press, pro and con, concerning specific applicants before the Board.

In considering the *Jarroll* case the Court made the following statement:

"Perhaps I should add that there might be room or a basis for a different conclusion, if these contacts, verbal and written, had been recorded in the public file for all to see, and for those who desired, to oppose, in the full glare of a public hearing." 225 F.Supp. at 834.

In *United Air Lines, Inc. v. Civil Aeronautics Board*, 114 U.S. App. D.C. 17, 309 F.2d 238 (1962), this Court investigated a claim of *ex parte* contacts and found that:

"Here the most important communications -- even if they were contrary to the Board's rules as they then existed -- were placed in a public file which was available to the petitioners if they chose to look. Nor was there anything savoring of corruption or attempt to corrupt." 309 F.2d at 241.

The Court distinguished *Sangamon Valley Television Corporation v. United States*, 111 U.S. App. D.C. 113, 294 F.2d 742 (1961) and 106 U.S. App. D.C. 30, 269 F.2d 221 (1960). In that case an applicant for a TV station permit made personal visits and appeals to members of the Commission without the knowledge of the other parties in interest and gave gifts to certain commissioners.

Decisions requiring the disqualification of an administrative officer have involved the participation of a member of the administrative body who had previously investigated or prepared the case for litigation on behalf of one of the parties. *Amos Treat & Co. v. Securities and Exchange Commission*, 113 U.S. App. D.C. 100, 306 F.2d 260 (1962); *Trans World Airlines v. Civil Aeronautics Board*, 102 U.S. App. D.C. 391, 254 F.2d 90 (1958).

Appellants' motion to disqualify Board member J. Bernard Wyckoff was so clearly untimely and insufficient on its face that the Board need not have given it the detailed consideration that it was afforded.

The record shows that the motion was filed after the November 26 protest hearing had begun, effectively preventing any normal opposition by Appellees. It is significant that Appellants made two motions before the Board on November 24, without intimating that a motion to disqualify Mr. Wyckoff would be made two days later. (JA 40) Identical facts were held to make an affidavit of bias and prejudice against a District Judge untimely. *Laughlin v. United States*, 120 U.S. App. D.C. 93, 99, 344 F.2d 187, 193 (1965).

The original motion also alleged no facts in support and no Board member was named. No affidavit was filed in support of the motion. Counsel for Appellants made the surprising assertion that he would have "to await a decision on this motion before I determine how much evidence I should proffer." The motion was, of course, denied by the Board. (JA 42-43)

Only *after* the motion was denied by the Board did Appellants request permission to introduce testimony on the motion. When the Board agreed to a proffer of proof suggested by Appellee, Appellants asserted that they would show that Mr. Wyckoff was Secretary of the Association in January 1965, when the Association had protested the issuance of an A.B.C. license to Seabright, Inc.⁵ It was also proffered that Mr. Wyckoff was the recipient of secret *ex parte* communications from the Association and that there were letters of protest in the official files of the Board from alleged friends and neighbors of Mr. Wyckoff. (JA 44-45) Counsel for Appellants later filed a second motion to disqualify accompanied by an affidavit setting out the same matters as in his proffer. This motion was also considered and denied by the Board. (JA 45-46)

⁵ An affidavit filed by the President of the Association showed that Mr. Wyckoff did not become Secretary until May 10, 1965, and immediately resigned that office upon his appointment to the Board (JA 23-24).

After final argument on November 29, counsel for Appellants filed yet another pleading on the matter, this termed a "Supplemental Supporting Affidavit." (JA 21, 110)

This attempt at disqualification, which appeared in bits and dribbets throughout the hearing, was filed with full knowledge that there are but three members of the Board and that all three are necessary for the orderly disposition of cases.⁶ At the close of the hearing the Chairman of the Board made the following statement:

"At this further point the Board wants to state at this time that the Congress, in writing the statute and the Commissioners, obviously believe that a three-member Board is important for the alcoholic beverage control work. So therefore, in the absence of very compelling circumstances to the contrary the ruling said it calls for three members to sit at all times." (JA *)

The absolute necessity for a timely and sufficient affidavit of bias and prejudice has been recognized by Congress in both the Administrative Procedure Act, 5 U.S.C. § 1006(a),⁷ and in 28 U.S.C. § 144,⁸ dealing with the disqualification of district judges.

⁶ The Board might have invoked the doctrine of necessity. *Loughran v. Federal Trade Commission*, 143 F.2d 431 (8th Cir. 1944).

* This portion of the record was designated by Appellees to be included in the Joint Appendix, but was omitted from the printed Joint Appendix because of printer's error.

⁷ The statute reads in pertinent part:

* * *

"Any such officer may at any time withdraw if he deems himself disqualified; and upon the filing in good faith of a timely and sufficient affidavit of personal bias or disqualification of any such officer, the agency shall determine the matter as a part of the record and decision in the case." 60 Stat. 241 (1946)

⁸ "Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before

In interpreting these statutes, the courts have given great importance to the elements of timeliness and sufficiency. See, e.g., *In re Union Leader Corporation*, 292 F.2d 381, 390 (1st Cir. 1961), *cert. denied* 368 U.S. 927; *Long Beach Federal Savings and Loan Association v. Federal Home Loan Bank Board*, 189 F.Supp. 589, 610 (D. S.D. Calif. 1960), *reversed on other grounds*, 295 F.2d 403 (9th Cir. 1961)⁹

This Court has held that it is fatal not to comply with these two requirements. *Eisler v. United States*, 83 U.S. App. D.C. 315, 170 F.2d 273 (1948), *appeal dismissed* 338 U.S. 883 (1949). In *Eisler*, the Court quoted with approval *Berger v. United States*, 255 U.S. 22, 23 (1921): "a sufficient affidavit . . . must state facts and reasons which tend to show personal bias and prejudice regarding the justiciable matter pending."

The Board's detailed consideration of Appellants' motions and affidavits to disqualify; the numerous opportunities for Appellants to state their case on this question, both orally and in writing; and the submission of an affidavit by Mr. Wyckoff and specific findings on the matter by the Board that they were convinced "individually and jointly" that

whom the matter is pending has a personal bias or prejudice either against or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

"The affidavit shall state the facts and the reasons for the belief that bias or prejudice exists, and shall be filed not less than 10 days before the beginning of the term at which the proceeding is to be heard, or good cause shall be shown for failure to file it within such time. A party may file only one such affidavit in any case. It shall be accompanied by a certificate of counsel of record stating that it is made in good faith." 62 Stat. 898, as amended 63 Stat. 99.

⁹ Cf. *North American Airlines v. Civil Aeronautics Board*, 100 U.S. App. D.C. 5, 12, 240 F.2d 867, 874 (1956), *cert. denied* 353 U.S. 941 (1957).

there was no prejudice or bias present in any of its members (JA *), afforded a complete administrative hearing on the issue.

Thus, the courts should not interfere absent clear illegality of action. In *Ickes v. Underwood*, 78 U.S. App. D.C. 396, 141 F.2d 546, *cert. denied* 323 U.S. 713 (1944), the function of judicial review of an administrative proceeding was held to be complete when it is determined "that there has been a fair hearing, with notice and an opportunity to present the circumstances and arguments to the decisive body, and an application of the statute in a just and reasoned manner." See *Hammond v. Hull*, 76 U.S. App. D.C. 301, 131 F.2d 23, *cert. denied* 318 U.S. 777 (1943); *Proctor & Gamble Co. v. Coe*, 68 U.S. App. D.C. 246, 96 F.2d 518 (1938).

IV.

The District Court Did Not Err in Granting Appellees' Motion for Summary Judgment

Although Appellants allege that the District Court erred in granting Appellees' Motion for Summary Judgment, they fail to allege the existence of a material issue of fact that was before the District Court at that time. Rather Appellants claim only that the Court's denial of their request to take further depositions deprived them of the possibility of developing a material issue of fact.

Considering the extensive hearing before the Board and the pleadings and depositions before the District Court, every issue raised has been factually fully developed. The facts, construed most favorably to Appellants, were insufficient in law to support their case. A party resisting a motion for summary judgment may not hold back his proof,

* This portion of the record was designated by Appellees to be included in the Joint Appendix, but was omitted from the printed Joint Appendix because of printer's error.

but must show enough in opposition to the motion to establish a genuine issue of fact. *Engl v. Aetna Life Insurance Co.*, 139 F.2d 469 (2nd Cir. 1943). It has been held that the ruling must be "made on the record actually presented, not one potentially possible." *Madeirense Do Brazil S/A v. Stubman-Emrick Lumber Co.*, 147 F.2d 399 (2nd Cir. 1945), *cert denied* 325 U.S. 861.

Accordingly, a motion for summary judgment is not to be denied merely because Appellants wish, through discovery, to search for an issue, especially in view of their already abundant opportunities before the Board and the District Court.

Judge Learned Hand has stated:

"But if a motion for summary judgment is to have any office whatever, it is to put an end to such frivolous possibilities when they are the only answer." *De Luca v. Atlantic Refining Co.*, 176 F.2d 421 (2nd Cir. 1949).

Indeed the pleadings, evidence and testimony taken on all issues in this case are uncontradicted. The party opposing the motion must present facts in the proper form. Conclusions of law are not adequate. The opposing party's facts must be of a substantial nature and not fanciful. See *Moore's Federal Practice and Procedure*, 1965 ed., § 17.10 (3), p. 1292-93.

The record fails to show and the Appellants fail to allege any existing material issue of fact and the District Court's grant of the Appellees' motion for summary judgment was proper.

CONCLUSION

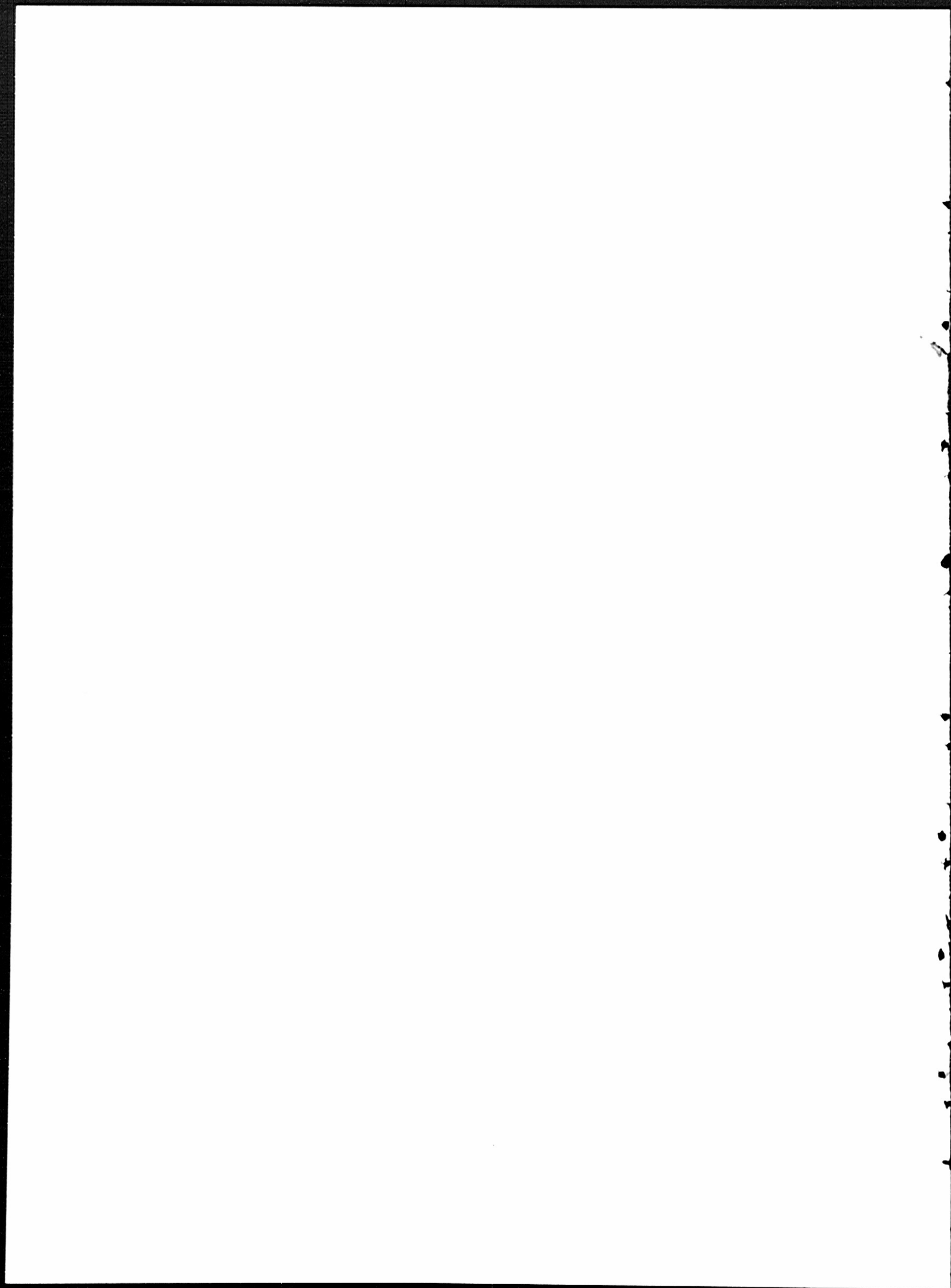
In view of the foregoing, Appellees respectfully request that the judgment of the District Court be affirmed.

Respectfully submitted,

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FILED DEC 7 1966

Nathan J. Paulson
CLERK

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC. and
SEABRIGHT, INC.,

Appellants,

vs.

JOY R. SIMONSON, *et. al.*,

Appellees.

No. 20,196

CARBER, INC.
Trading as Roundtable Restaurant,

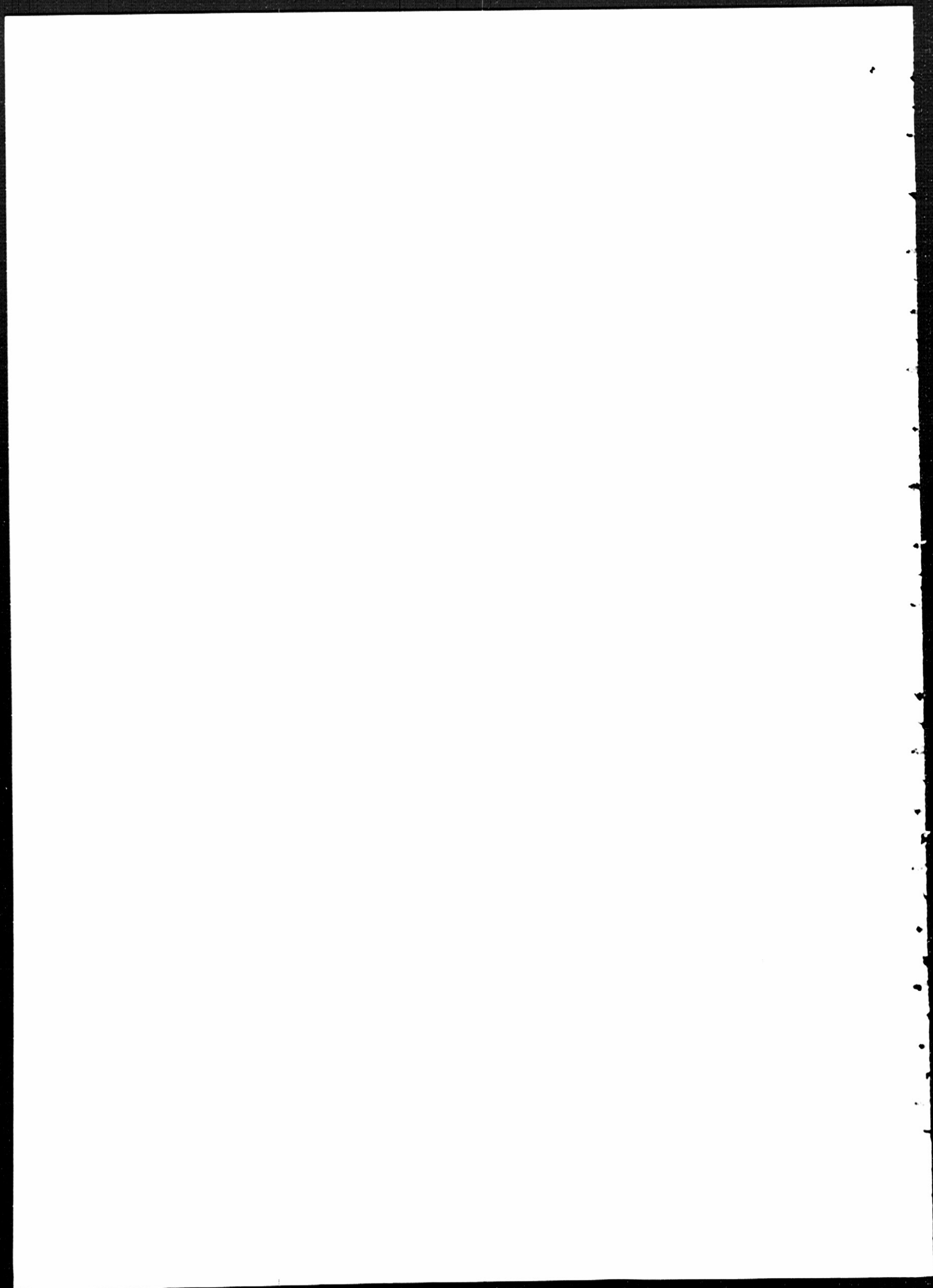
Appellant,

vs.

JOY R. SIMONSON, *et. al.*,
Individually and Comprising the Membership
of the Alcoholic Beverage Control Board, and
MR. & MRS. GARDNER E. PALMER, *et. al.*,

Appellees.

PETITION FOR REHEARING AND/OR
REHEARING EN BANC



I.

PRELIMINARY STATEMENT

The judgment of the District Court granting appellees' Motion for Summary Judgment was affirmed by a three-Judge division of this Court.¹ Appellant respectfully suggests that the panel erroneously limited *In the Matters of Lee Roy Murchison and John White*, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955) and *Amos Treat and Co. v. Securities and Exchange Commission*, 113 U. S. App. D. C. 100 (1962). Appellant further respectfully suggests that the panel erroneously concluded that the Alcoholic Beverage Control Board of the District of Columbia (hereinafter referred to as the "Board") did not disregard appellant's equities.

For these reasons and because the Opinion establishes a binding precedent for future cases before this Court on points of law likely to recur, appellant respectfully urges the Court to rehear this case or, in the alternative, to rehear this case *en banc*.

The relevant facts are substantially as follows:

II.

FACTS

On June 1, 1964, appellant Carber, Inc., trading as the Roundtable Restaurant, 2813 M Street, N. W., Washington, D. C., was issued by the Board a Retailer's Class "C" alcoholic beverage license. Pursuant thereto, appellant entered into various contracts, including a lease for five years, incurring obligations of approximately \$100,000. Because of the time involved in making certain improvements, the license was

¹ Carber, Inc. v. Joy R. Simonson, et. al., No. 20,196, decided November 22, 1966.

not actually issued until November 25, 1964. Since that time appellant has continuously operated and maintained its restaurant at said premises.

A Class "C" alcoholic beverage license is issued each year for the period February 1 through January 31. Accordingly, appellant applied for the renewal of its said license in January, 1965. This first renewal application was not opposed by anyone and the new license for the license year February 1, 1965, through January 31, 1966, was approved by the Board on January 18, 1965, effective February 1, 1965. Since February 1, 1965, appellant had operated its restaurant without any criticism or complaint from the Board, although its inspectors made regular inspections. No complaint had been filed against said licensee nor was said licensee cited by the Board for any violation of the Alcoholic Beverage Control Act or the Regulations promulgated thereunder.

In January, 1966, appellant applied for a second renewal of its said alcoholic beverage license. Same was protested by certain individuals and hearing was held on January 25, 1966, on the application before the Board.

Early in 1965, the Citizens Association of Georgetown (hereinafter referred to as the "Association"), an association having jurisdiction over the area in which appellant conducts its restaurant business, announced its intention to protest the renewal of appellant's license and other similar licensees on M Street, N. W. Said Association sponsored, carried on and fomented a campaign in opposition to renewal of the licenses. The Association urged its members to report to the Police Department any trespassing, vandalism, disorderly conduct and illegal parking of which they were aware without indicating whether appellant or other licensees were responsible therefor. The Association further urged its

members to appear before the Board and actively protest the renewal applications filed by such licensees.

Although the Association did not enter its formal protest to appellant's renewal application, it urged and supported individual Georgetown residents in their opposition to such application. In this manner the Association became the complaining witness and spearheaded the opposition against appellant.

In the case of *Kaycee* and *Seabright*, the Citizens Association formally entered the proceedings before the Board and was represented by counsel of its choice. These corporations had for some time held licenses and their operation had been in conformity with all municipal regulations, including those issued by the A.B.C. Board, and no evidence of any violation of law by them was considered at the license hearing.

The Association communicated with various officials of the Police Department of the District of Columbia, urging opposition to said renewals. The Association further published and disseminated to its members certain news publications, identifying appellant's restaurant in extreme and inflammatory language, stating, among other things, that the continued operation of the restaurant in Georgetown would impair the real estate values of the members' properties in the Georgetown area. The aforesaid publications are set out in the Joint Appendix filed herein.

Appellee J. Bernard Wyckoff, a member of the Board, has been for many years an active participating member of the Association. Prior to his appointment to the Board he knew of the Association's policy with respect to the licenses on M Street. He was elected Secretary of the Association at the spring meeting of 1965, and served on its Executive Committee. He attended various meetings of the Executive Committee, including the meeting of July 2, 1965, wherein the Executive Committee *unanimously* resolved to oppose any applications for liquor licenses in

the Georgetown area (J.A. 297). While the resolution of July 2, 1965, gave the President the power to oppose same until the next regular meeting of the Association, such Association ratified the action of the Executive Committee and voted to oppose all new Class "C" (restaurant) liquor licenses in Georgetown (J.A. 323). He was appointed to the Board on August 29, 1965. On August 20, 1965, he resigned his office in the Association, but maintained his membership. He received each of the aforesaid inflammatory publications referring to appellant, both before and after his appointment to the Board and his resignation as Executive Secretary of the Association. Mr. Wyckoff owns property and resides in the Georgetown area.

Appellant filed timely motion with the Board that Mr. Wyckoff disqualify himself or be disqualified from sitting as a Board member. Such motion was overruled by the Board.

On January 29, 1966, the Board (one member dissenting) denied appellant's application for renewal of its said alcoholic beverage license. The Board issued Findings of Fact and Conclusions of Law. Thereafter, on January 31, 1966, appellant filed suit in the District Court for judicial review of the decision of the Board and for injunction. In answer to appellant's Motion for Preliminary Injunction, appellees filed Motion for Summary Judgment. On April 5, 1966, the District Court granted appellees' Motion for Summary Judgment and dismissed appellant's Motion for Preliminary Injunction. Such Court further enjoined appellee Board, pending appeal, from interfering with the continued operation of appellant's restaurant as a Retail Class "C" licensee.

III.

ARGUMENT

The chief thrust of appellant's argument here was twofold. First, that it was error for Board member Wyckoff not to have disqualified himself or have been disqualified by the Board from sitting on appellant's case. Secondly, appellant argued that the Board committed error in treating appellant's renewal application differently than other renewal applications considered by the Board and ignoring the equities that had intervened in favor of appellant.

A.

At the very least, a question of fact existed which precluded the District Court from granting appellees' Motion for Summary Judgment. That question is whether or not appellant was denied a fair hearing before the Board, considering J. Bernard Wyckoff's previous actions and activities in and with the Citizens Association of Georgetown, a violent opponent to appellant's license application.

In its decision, the panel stated at page 3:

"With respect to the alleged disqualification of one of the Board members, our view is there was not sufficient evidence of bias on his part to make his participation in the proceedings unlawful or improper."

From such language it would appear that appellant had a burden of showing actual bias or prejudice on the part of Mr. Wyckoff as a prerequisite to his disqualification. Appellant respectfully submits that it had no such burden.

The Supreme Court of the United States in *In the Matters of Lee Roy Murchison and John White*, 349 U. S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955) at page 136, held:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. *But our system of law has always endeavored to prevent even the probability of unfairness.* To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. *Circumstances and relationships must be considered.* This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge *** not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' *Tumey v. State of Ohio*, 273 U. S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749. *Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the scales of justice equally between contending parties.* But to perform its high function in the best way 'justice must satisfy the appearance of justice.' *Offutt v. United States*, 348 U. S. 11, 14, 75 S. Ct. 11, 13." (Emphasis supplied)

In *Amos Treat & Co. v. Securities and Exchange Commission*, 113 U. S. App. D. C. 100, 103 (1962), this Court held:

"At the very least, quasi-judicial proceedings entail a fair trial. As the Supreme Court has said in other contexts:

'A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness.

* * *

'It would be very strange if our system of law permitted a judge to act as a grand jury and then try the very person accused as a result of his investigations. *** Having been a part of that process a judge cannot be, in the very nature of things, wholly disinterested in the conviction or acquittal of those accused. *** Fair trials are too important a part of our free society to let prosecuting judges be trial judges of the charges they prefer.' [In re Murchison, supra]'

Amos Treat was an action by registrants to enjoin the Security and Exchange Commission from prosecuting a revocation proceeding on the ground that one of the commissioners had previously been an employee of the Commission's division of corporation finance while Amos Treat & Company was under investigation. This Court held at 113 U. S. App. D. C. 104:

"Stated otherwise with respect to agency adjudicatory proceedings, due process might be said to mean at least 'fair play.'

"One of these essentials is the resolution of contested questions by an impartial and disinterested tribunal. These adjectives are not absolute but relative as every thoughtful person knows. *Decisions affecting human beings, made by human beings, necessarily are colored by the sum total of the thoughts and emotions of those responsible for the decision.* The judicial process, or any other human process, cannot operate in a vacuum. The most we can hope for is that persons charged with the responsibility of decisions affecting other people's lives and property will be as objective as humanly possible. Certain rules, of more or less definiteness, have been worked out through judicial decision by judges to regulate their own conduct. ***

* * * * *

"The board argues that at worse the evidence only shows that one member of the body making the judication was not in a position to judge impartially.

We deem this answer insufficient. Litigants are entitled to an impartial tribunal whether it consists of one man or twenty and there is no way which we know of whereby the influence of one upon the others can be quantitatively measured." (Emphasis supplied)

The contention is not denied by appellees that the Association was the prime and vocal force in Georgetown objecting to the Board's licensing of appellant. It then becomes important to note Mr. Wyckoff's activities with such Association immediately prior to his sitting in judgment of appellant's case.

(1) Mr. Wyckoff was an active participating member of the Association for many years prior to his appointment to the Board.

(2) Mr. Wyckoff is a resident and property owner in Georgetown.

(3) Mr. Wyckoff was elected Secretary of the Association at the spring meeting in 1965.

(4) Mr. Wyckoff served on the Executive Committee of the Association.

(5) Mr. Wyckoff attended the Executive Committee meeting of the Association on July 2, 1965, and voted to oppose any new applications for liquor licenses in the Georgetown area (J.A. 297). While the resolution of July 2, 1965, gave the President the power to oppose same until the next regular meeting of the Association, such Association ratified the action of the Executive Committee and voted to oppose all new Class "C" (restaurant) liquor licenses in Georgetown (J.A. 323).

(6) Prior to his appointment to the Board he knew of the Association's policy with respect to the licenses on M Street.

(7) After appointment to the Board on August 20, 1965, although resigning his office in the Association, he maintained his membership therein.

(8) Mr. Wyckoff received each inflammatory publication of the Association referring to appellant both before and after his appointment to the Board.

(9) Mr. Wyckoff, as a Board member, was placed in the position of voting either for or against the wishes of his friends, neighbors and the Association, whose displeasures he would not want to incur, consciously or unconsciously.

Two of the aforesaid items warrant particular attention. On July 2, 1965, just seven weeks prior to Mr. Wyckoff's appointment to the Board, the Association held an Executive Committee meeting. The minutes of said meeting (J.A. 296) show that Mr. Wyckoff was present and voted to oppose "any new applications for liquor licenses in the Georgetown area." (J.A. 297). While the resolution of July 2, 1965, gave the President the power to oppose same until the next regular meeting of the Association, such Association ratified the action of the Executive Committee and voted to oppose all new Class "C" (restaurant) liquor licenses in Georgetown (J.A. 323). Thereafter, appellant's application came before the Board, which denied same, stating that appellant's application was being treated as a new application. It is also of interest to note that Gardner Palmer, intervenor below, and one of the appellees here, was also present at the aforesaid Executive Committee meeting.

The second item deserving special mention is that of the Association's Newsletters received by Mr. Wyckoff prior to his ruling on appellant's application. The Newsletter of September, 1965 (J.A. 318), charged that the presence of the M Street licensees damaged the "residential quality and historic value" of Georgetown properties. The Newsletter speaks of the very same area in which property is owned and occupied by Mr. Wyckoff. Other Newsletters equally vilify appellant by their use of inflammatory language. Mr. Wyckoff was accordingly asked to rule on an

application which his association had informed him, if granted, would affect his property in Georgetown adversely. It is hard to imagine a situation which would create more of an aura of the "probability of unfairness." Certainly the maxim that justice must satisfy the appearance of justice was not met.

In view of the above, appellant respectfully submits that appellant did not receive a hearing before the Board which met the requirements of due process of law.

B.

Although denied admission into evidence in the Court below, appellant set forth in its Brief and Joint Appendix excerpts from decisions of the Board going back to January, 1959, in which the Board recognized and considered renewal applications (such as appellant's here) differently than new or original applications. Such different consideration was founded upon the fact that once the Board issues a license certain equities intervene which deserve consideration upon the licensee's application to renew such license. Those equities include the entering into of long-term leases and contracts, the purchase of equipment, fixtures and merchandise, all at substantial costs, and the execution of promissory notes and mortgages. In appellant's case, an investment of approximately \$100,000 was made and a five-year lease entered into, all on reliance of the Board's long-standing procedures.

In its Brief, appellant cited at length the rulings of this Court in *In re Carter*, 85 U. S. App. D. C. 229, 177 F.2d 75 (1949); *In re Carter*, 89 U. S. App. D. C. 310, 192 F.2d 1915; and *Churchill Tabernacle v. Federal Communications Commission*, 81 U. S. App. D. C. 411, 160 F.2d 244 (1947).

Such decisions of this Court uniformly hold that a license, once granted, confers a valuable property right upon the licensee, thereby distinguishing his position upon the application for renewal of his license from that of an applicant for a new or original license. The Board itself, until the present case, so agreed and acted in conformity with such decisions. In the instant case, however, the Board departed from its previous long-standing practice and ignored the intervening equities.

In its decision, the panel held at page 3:

"The record shows that the Board did not disregard the equities . . ."

Appellant respectfully submits that the record discloses the contrary. In its Findings of Fact (J.A. 304, 309), the Board held that although it was *mindful* of appellant's equities, it nonetheless considered appellant's application on the same basis as they would consider an original application where no equities had intervened.

By applying a new and different standard to appellant's application, without having given notice that such new standard was to be applied, the Board deprived appellant of its property without due process of law.² If such a policy is allowed to stand it would result in dangerous repercussions to the public interest. Under such policy, equities would be non-existent, and substantial investments placed in dire jeopardy. No one in the business community would, as they have previously done, extend credit, execute long-term leases or make loans to licensees. All attendant commercial transactions would be similarly affected.

As this Court held in *In re Carter*, 89 U. S. App. D. C. 323, 324:

² The Board has never argued that appellant had been advised that such new and different standard was to be applied to its application.

"It is held by some courts that a license is a privilege and is in no sense a property right, even during its term. See the cases collected in 53 C.J.S., Licenses, §2, p. 449. *This Court has held otherwise with respect to a license to engage in a business.* United States ex rel. Daly v. MacFarland, 1907, 28 App. D. C. 552, 561. And we held in the first Carter case that a bondsman's authority is a property right during its term. *That being true, I think there is no valid distinction between revocation and refusal to renew, since the same consequences flow from both. Due process of law, being required for the one, should be and is required for the other . . .*" (Emphasis supplied)

The appellants, *Kaycee* and *Seabright*, wish the Court to consider the point overlooked that the evidence at the A.B.C. Board hearing in protest against the establishments operated by these corporations were general in character and that there was no substantial evidence to connect the operation of the establishments to the conditions complained of by the citizens of Georgetown. Thus, other restaurants with similar policies of entertainment and similar clientele are permitted to operate. Can there be equity under these circumstances?

It is interesting to note that the record below is replete with examples of new licenses granted by the Board in this area after the establishment and licensing of the appellants.

If one admits that the problems stated by the citizens exist, and that other restaurants contributed to them, was the decision fair? Rather, it would appear that this Court approved a decision based on the loudness of the protest by the community involved. This precedent is a most dangerous one. Where an applicant's right to continue in business becomes a pure popularity contest, which is the present posture of these cases, and where a record of observance of all law and regulations can be disregarded by the Board in a renewal application, then the evils which could follow and will necessarily follow need not be particularized.

CONCLUSION

In consideration of the foregoing, appellant respectfully requests this Court to rehear this case or, in the alternative, to rehear this case *en banc*.

Respectfully submitted,

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CERTIFICATE OF GOOD FAITH

We hereby certify that this petition is presented in good faith and not for delay.

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Leonard W. Burka

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition was delivered, this 7th day of December, 1966, to the following:

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BRIEF FOR APPELLEES SIMONSON, TYSON, AND WYCKOFF

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 20,194

KAYCEE, INC. and SEABRIGHT, INC., Appellants,

v.

JOY R. SIMONSON, et al., Appellees.

No. 20,196

CARBER, INC., Appellant,

v.

JOY R. SIMONSON, et al., Appellees.

Appeal From The United States District Court
For The District Of Columbia

United States Court of Appeals
for the District of Columbia Circuit

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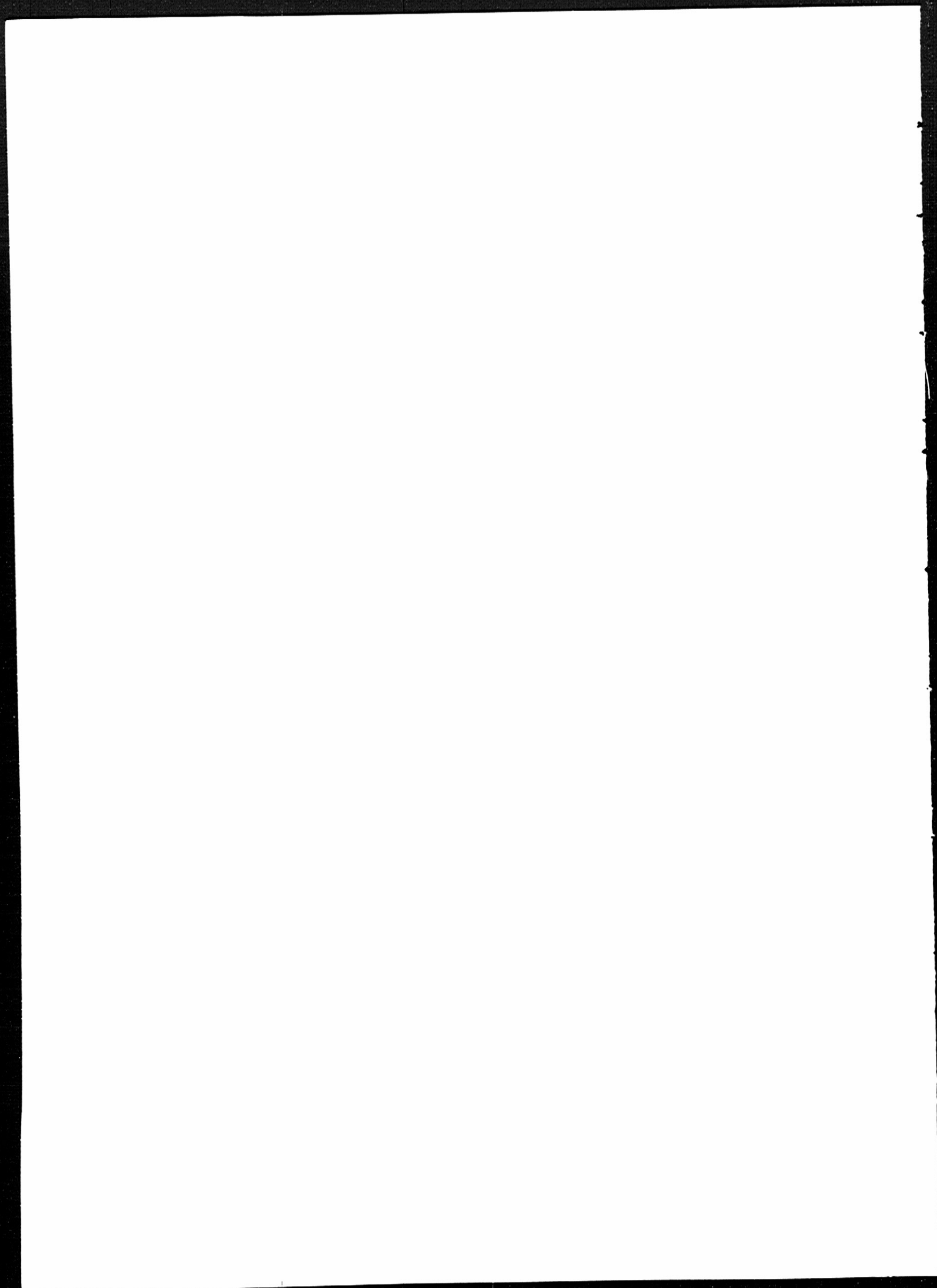
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COUNTER-STATEMENT OF QUESTIONS PRESENTED

Appeal Nos. 20, 194 and 20, 196

In the opinion of appellees Simonson, Tyson, and Wyckoff, members of the Alcoholic Beverage Control Board, the questions are:

1. Whether the activities of the Citizens Association of Georgetown, appellee Wyckoff's affiliation with such Association, and his residency in Georgetown were sufficient to require member Wyckoff's disqualification in the proceedings involving appellants' applications for alcoholic beverage licenses.

2. In deciding whether appellants' licenses should be reissued, was not the Board required, under the prevailing statute, to determine whether their establishments are still appropriate for the neighborhood in which each is located, and whether their principal officers and directors are still of "good moral character and generally fit for the trust to be in * * * [them] reposed."

3. Whether there is, in the administrative record, substantial evidence to support the findings of the Board that appellants' establishments are not appropriate for the neighborhood in which each is located.

Appeal No. 20, 196 (Roundtable Restaurant)

4. Whether there is, in the administrative record, substantial evidence to support the finding of the Board that the principal officers

of appellant Roundtable are not "of good moral character and generally fit for the trust to be in * * * [them] reposed."

Appeal No. 20,194 (Peppermint Lounge and Corral Cafe)

5. Whether there was, in the court below, a substantial issue of fact to be litigated.

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UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

No. 20,194

KAYCEE, INC. and SEABRIGHT, INC., Appellants,

v.

JOY R. SIMONSON, et al., Appellees.

No. 20,196

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v.

JOY R. SIMONSON, et al., Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR APPELLEES SIMONSON, TYSON, AND WYCKOFF

COUNTER-STATEMENT OF THE CASE

Proceedings before the District Court

Appellant Kaycee, Inc., t/a Peppermint Lounge, which has been
the holder of a Retailer's Class C liquor license¹ at premises 3263 M

¹ Such a license permits the sale of liquor, wine, and beer for
consumption on the premises.

Street, N. W., appellant Seabright, Inc., t/a Corral Cafe, which has been the holder of a Retailer's Class C liquor license at premises 3267 M Street, N. W., and appellant Carber, Inc., t/a Roundtable Restaurant, which has been the holder of a Retailer's Class C liquor license at premises 2813 M Street, N. W., filed in the United States District Court a complaint for injunctive relief from orders of the Alcoholic Beverage Control Board (hereinafter referred to as the Board), denying appellants' applications for Retailer's Class C liquor licenses for the license year beginning February 1, 1966 (J. A. 4, 216). In the complaint of appellants Peppermint Lounge and Corral Cafe it was alleged that appellee Wyckoff, a member and former secretary of the Citizens Association of Georgetown (hereinafter referred to as the Association), which Association was protesting the issuance of licenses to appellants received secret and ex parte communications from the Association, and that this, coupled with his residency in the vicinity of appellants' establishments, deprived him of the necessary objectivity to sit as a member of the Board and to render a fair and impartial judgment. Appellants alleged further that neither they nor any of their officers had violated the law during the previous year, that their establishments were operated in an orderly fashion, that appellant Peppermint Lounge had been operating at the same location since January 11, 1963, and appellant

Corral Cafe had been operating at the same location since May 23, 1955, and that, under the pre-existing policy of the Board, each was entitled as a matter of right to a license for the next license year. It was further alleged that, although the residents of the neighborhood complained of vandalism, parking violations, and other violations of the law, there was no substantial evidence to connect such misconduct with appellants or their patrons. Appellants then alleged that the refusal to issue the licenses was arbitrary, capricious, unreasonable, and in violation of their constitutional rights of due process. (J. A. 4-14.)

Appellant Roundtable alleged in its complaint that it was first granted a liquor license by the Board on June 1, 1964,² that a new license was issued for the license year beginning February 1, 1965, that during the last license year neither it nor any of its officers had been involved in any violation of the law, and that the findings of fact and conclusions of law, upon the basis of which the Board denied appellant a license for the license year beginning February 1, 1966, were arbitrary and not supported by substantial evidence. Appellant alleged

² Appellant did not open its establishment, however, until November 25, 1964 (J. A. 305).

further that the Association initiated and sponsored an inflammatory campaign in opposition to the granting of the license, that appellee Wyckoff was a member and former officer of the Association and received ex parte communications from the Association, and that he lives in the vicinity of appellant's establishment, all of which, it was alleged, were sufficient to disqualify him from sitting as a member of the Board. Appellant also alleged that the refusal of appellee Wyckoff to disqualify himself, and/or the refusal of the Board to disqualify him, deprived appellant of a fair hearing and that the Board erroneously treated the application as an original application rather than a renewal; and appellant asked that a judgment be entered granting it the license sought, or, in the alternative, that the matter be remanded for a hearing before a new Board. (J. A. 216-224.)

The District Court issued a temporary restraining order, the effect of which was to permit appellants to continue the operation of their businesses during the period that the matters were being litigated in the court below (J. A. 2, 119). The District Court also permitted the Association to intervene as a party defendant in the case of the Peppermint Lounge and the Corral Cafe (J. A. 2), and permitted various residents of the area to intervene as parties defendant in the

case of the Roundtable (J. A. 120). The court then, with the consent of all parties, consolidated the cases. In an effort to substantiate their claim that appellee Wyckoff was biased and prejudiced, appellants were permitted to take, in open court, the depositions of Mr. Wyckoff and of the president of the Association.

The consolidated cases came on for hearing on appellants' motions for preliminary injunctions and appellees' motions for summary judgments. In support of their motions for preliminary injunctions, appellants introduced evidence, which included the depositions of Mr. Wyckoff and the president of the Association, and the appellees incorporated in their motions for summary judgments the pertinent portions of the records of proceedings before the Board. At the conclusion of the hearing on all the motions, the court, in each case, granted summary judgment to appellees, and dismissed, as being moot, appellants' motions for preliminary injunctions (J. A. 117, 324). The court also stayed the effectiveness of its judgments pending appeal to, and disposition of the cases by, this Court (J. A. 117, 324). The appeals followed on April 11, 1966 (J. A. 118, 325).

Proceedings before the Board in Appeal No. 20, 194
(Peppermint Lounge and Corral Cafe)

At the commencement of the proceedings before the Board, appellants submitted a written motion, without any supporting affidavit, reciting that if, at the beginning of the previous license year, any member of the Board participated, directly or indirectly, in opposing or in recommending or approving the opposition to the issuance of a license to the Corral Cafe, "It is, in the interest of fair play, respectfully requested and moved that any such member refrain from participating in this Protest Hearing against these applicants and in meeting and deliberating on these applications with other members of the Alcoholic Beverage Control Board" (J. A. 16).

The Board, after having afforded appellants an opportunity to argue the motion, and appellants having failed to offer anything more specific, denied the motion (J. A. 42-43). The Chairman stated that none of the members of the Board directly participated in the proceeding referred to in the motion, and that "[a]lthough it is possible that members of the Board, as members of certain civic groups, were present when such groups concluded to file such opposition, individual Board members have no individual recollection thereof and are clear in their present conclusion that the matters now

before the Board can be decided entirely upon the present record and the evidence which will be presented to the Board." The Chairman went on to say that "[t]here is nothing contained in or filed with the motion to indicate prejudice on the part of any member of the Board and none is found to exist." (J.A. 42-43.)

After the motion was denied, appellants made a proffer of proof that, at the time the Association voted to oppose the issuance of the license of the Corral Cafe for the previous year, appellee Wyckoff was a member of such Association and gave his support to such action, that Wyckoff was the secretary of the Association at the time of his appointment to the Board, that the Association has by written and other communications indicated its opposition to the present applications, and that the Board's files contain numerous communications protesting the present applications from persons who are long-standing friends and immediate neighbors of Mr. Wyckoff (J. A. 44-45).

Upon being advised that the Board was ready to proceed on the merits, appellants filed another written motion asking that Mr. Wyckoff " * * * remove himself from participating in these proceedings and from deliberations and meetings leading to findings and decisions in connection with the same for reasons that applicants

believe there to be a genuine conflict of interest and matters of bias depriving said Board member of the independent status requisite for applicants to be accorded due process of law * * *" (J. A. 17).

The motion was accompanied by an affidavit of appellants' counsel containing substantially the same matters set forth in appellants' previous proffer of proof. The Board denied the motion (J. A. 46).

Affidavits of the president of the Association, of Mr. Wyckoff, and a further affidavit of appellants' counsel were later received by the Board (J.A. 21, 23, 24). Mr. Wyckoff averred that he was appointed to the Board on August 20, 1965, that he has been a resident of Georgetown since 1922 and a member of a citizens' association during that time, that he, prior to his appointment to the Board, had been Chairman of the Parks Committee of the Association, and was elected secretary to the Association on May 10, 1965. He further averred that, upon receiving an appointment to the Board, he resigned from these offices and resigned active membership in the Association and, although he is on the mailing list and receives all correspondence mailed to the membership at large, he no longer attends its meetings, that he has no independent recollection of ever having taken part in the Association's opposition to prior applications of appellants, that,

although he may have been present at times when such matters were discussed at the meetings, he has no recollection of any such discussions, and that "I have formed no bias concerning the instant applications for any reason whatsoever and state that I will decide the merits of these applications upon the facts presented to the Board which are contained in the administrative record and upon the prevailing law." (J. A. 24-26.)

The Board offered to withhold consideration of the cases for a period of one week in order that appellants might initiate legal proceedings on the question of the disqualification of Mr. Wyckoff. Appellants' attorney replied, "I have no intention of going to court at this time on this matter."

The applications of appellants Peppermint Lounge and Corral Cafe were, with the approval of all parties, consolidated, and the Board proceeded with the cases.

Mrs. Phyllis Ben Kahla, president of Kaycee, Inc. (Peppermint Lounge), testified that prior to June 18, 1965, the corporation, under the direction of her partner, a Mr. Aniba, of her husband and of herself, operated a restaurant under the name of Cous-Cous, which specialized in Arabian food (J. A. 48). On June 18, 1965, her partner sold his interest in the business to

Ernest E. Byrd, who is also a principal officer and stockholder in appellant Seabright, Inc. (Corral Cafe) (J. A. 46-47). At that time, the name of the business was changed from Cous-Cous to Peppermint Lounge (J. A. 47), and they are now featuring rock and roll type music (J. A. 48). She estimates that the Peppermint Lounge has a seating capacity of 84 upstairs and 90 downstairs (J. A. 49). There has only been one arrest in the Peppermint Lounge during the last license year, and this resulted in a citation by the Board which was later dismissed. She stated that the corporation has spent money soundproofing the building (J. A. 48).

Mr. Byrd testified that the Corral Cafe has a seating capacity of 75 on each floor, that the band presently playing upstairs is called the "Roaches" and the band downstairs is called the "Creatures" (J. A. 84). Depending upon the circumstances, they may, on a given Saturday night, serve as few as 50 people, or as many as 300 to 400 (J. A. 84). The music is electronically amplified and the speakers are, at times, placed against the windows (J. A. 84-85). Mr. Byrd stated that they have spent over \$500 soundproofing the Corral (J. A. 83), and that when the door is closed "there is a soft aroma of music coming from the establish-

ment" (J. A. 85). In addition to the regular entertainment, the establishment provides a jam session on Sunday afternoons (J. A. 85). Mr. Byrd was asked if he had not made a statement at a recent hearing of the Board to the effect that he wouldn't be caught dead in a rock and roll place, and that he was going to get out as soon as he could. His reply was that since he did not have the script before him he would not know the exact terminology used (J. A. 83). Except for non-payment of bills, the Corral has not, during the past license year, been cited by the Board, and no officer or principal stockholder has been arrested during that period (J. A. 82). The food sales at the Corral, between the third and sixth of February 1965, were \$117.45, whereas the beverage sales for the same period were \$1,364.25 (J. A. 81-82). Both the Corral and the Peppermint Lounge have an admission charge of 50¢ on week nights, and \$1.00 on weekends (J. A. 84).

Three individuals testified that they were patrons of the Peppermint Lounge. The first, a young, single girl, stated that she was a regular patron at the Peppermint Lounge, and that she finds the place orderly and enjoyable (J. A. 50). The second witness, who has known Mrs. Ben Kahla since she was a little girl, visited the establishment once and found it to be operated in an orderly fashion

(J. A. 54). The third patron, a Tunisian and an announcer for the Voice of America, has visited the establishment many times, knows of no other place in Washington where the Cous-Cous dish could be obtained, and knows of no other place to entertain his friends

(J. A. 57). Both the Captain of No. 7 Precinct, Metropolitan Police Department, and an inspector for the Board testified that appellants' establishments were operated in an orderly fashion and that appellants' officers were cooperative.

By stipulation before the Board, it was stated that both the men's and ladies' rest rooms at the Peppermint Lounge and at the Corral dispensed prophylactics, and that the rest room for men in each establishment dispensed a cream known as DeLa', which is intended for use as a desensitizing agent during sexual relations. Also stipulated to was a Board order which permitted the sale and dispensing of contraceptives in liquor establishments. (J. A. 54-55, 57-58.)

Many residents of the neighborhood testified in opposition to the applications. A Mr. Harris, who lives at 3330 N Street, N. W., stated that he has lived in Georgetown for 19 years, and that he had not been bothered with vandalism until around February 1, 1965 (J. A. 60). Since that time he has had a brick thrown through a

window in his house, a brick thrown through a window in his garage, a front light knocked out, two panes of glass in the third floor knocked out, shrubbery in front of the house broken, and a light stolen (J. A. 59-60). Most of these acts of vandalism occurred on Saturday nights (J. A. 60). On Saturday nights he observes " a large influx of automobiles and a lot of horn honking and a lot of noisey [sic] people trying to park." After parking, they head south toward M Street establishments, and around eleven to twelve o'clock he hears and sees the same people coming back (J. A. 60). These individuals are in their teens and twenties, and are more exuberant when they return from the M Street establishments (J. A. 60).

Captain Kennedy, of the 7th Precinct, testified that there has been a significant growth in crime in the Georgetown area in the last two years (J. A. 61). He feels that the type of clientele attracted to appellants' establishments is a major cause of problems connected with complaints of depredation of property, throwing beer cans in yards, loud obscene conduct, and parking violations (J. A. 61). He has requested the Narcotics Squad, Morals Squad, Woman's Bureau, and Youth Aid Division to make periodic visits to the establishments (J. A. 61). To illustrate the marked increase in crime during the last year, he selected at random the months of

June and July. A comparison of arrests in the neighborhood during June and July of 1964 with those during the same period in 1965 shows that there were 29 for disorderly conduct in 1964 and 43 in 1965; 51 for intoxication in 1964 and 66 in 1965; 2 for urinating in public in 1964 and 31 in 1965; and 2 for drinking in public in 1964 and 7 in 1965 (J. A. 62).

Traffic is particularly heavy and slow moving on Friday and Saturday nights in Georgetown (J.A. 62). On these two nights, the police have three cranes assigned to remove illegally parked cars. They impound as many as 35 to 50 cars on Friday or Saturday nights, as as soon as an illegally parked car is towed away, another car takes its place (J. A. 63, 66). One police officer stated that it is practically impossible to find even an illegal empty parking spot in the 3200 block of M Street (J. A. 70). Appellants do not provide any parking service for their patrons (J. A. 49).

Lieutenant Cherry of the 7th Precinct testified that numerous acts of rowdyism and vandalism had occurred in and around the 3200 block of M Street. The complaints related to depredation committed to private property, public urination, prowlers, fights, indecent sex acts committed in parked automobiles, and to illegally parked automobiles (J. A. 65-66). He stated that " * * * the atmosphere

created by the type of music that's conducted on the premises seems to stimulate a certain segment of our society who are drawn to these establishments and create indirectly a police problem, blocking the sidewalks and, of course, * * * the parking is intolerable during the weekend" (J. A. 66).

Private Snyder, who has been assigned to the 7th Precinct for the past 20 years, is a foot patrolman in the 3200 block of M Street (J. A. 67). During the months of October and November of 1965, he arrested, in that block, two individuals for urinating in public, one for intoxication, and one for disorderly conduct (J. A. 67). The two individuals who were urinating in public had just come out of the Corral and stated that they could not use the toilet in the Corral (J. A. 67-68). He stated that the sidewalks in the 3200 block of M Street are especially crowded on weekend evenings (J. A. 69), and, before the windows were painted, people would congregate and block the sidewalk looking into the windows of appellants' establishments at the girls dancing in bikinis (J. A. 69). Patrons line the sidewalk waiting to get into appellants' establishments, and the precinct has two police officers assigned to the 3200 block of M Street to keep the patrons against the building so that the sidewalk will remain passable. When the door is open, the noise can be

heard two blocks away on K Street, and in the last year he has asked the Corral on about 25 occasions and the Peppermint Lounge on about 10 occasions to close their doors (J. A. 69-70).

Peter Belin, on behalf of 1750 paid-up members of the Association, who are homeowners and residents of the area, urged denial of the licenses on the basis of nuisance, noise, and crime (J. A. 71). It has been his personal observation that the greatest number of people congregate on the sidewalk directly in front of appellants' establishments (J. A. 71).

One Alvin Harper and his wife, of 1219 35th Street, N. W., canvassed a portion of the neighborhood to obtain signatures on a protest petition. The petition was signed by 138 persons; only four refused. He said that, as they took the petition around, the residents, young and old, greeted them with open arms (J. A. 73). Mr. Harper has had his iron fence damaged, the fence of one of his neighbors has been ripped out three times, and the fence of another neighbor has been ripped out. On the night before the hearing, he observed a drunken group stealing hub caps from a parked car (J. A. 74). In August of 1965, there was a gang fight in his neighborhood, and a man drew a pistol on a police officer (J. A. 74-75). Mr. Harper said the residents of the neighborhood are constantly faced with the most

obscene, vulgar, and gutter language that is possible by these patrons (J. A. 74).

Sam Levy, who lives two blocks north of appellants' establishments, has been a resident of Georgetown for 52 years, and has for 34 years operated a men's shop on M Street (J. A. 75). About six weeks prior to the hearing, he observed a fight in front of appellants' establishments. One of the participants had drawn a pistol. (J. A. 75-76.) A week later, around midnight on a Saturday night, he and his wife were returning home and found a car parked on his lot behind his house. Four young men were standing next to the car "relieving themselves." The police were called, and one of the boys stated they had been at the Corral, and that the men's room was so crowded they could not get in. (J. A. 77.)

Herbert Kunde, of 1220 Potomac Street, has observed individuals urinating on his patio and in other open places near appellants' establishments (J. A. 79). He has observed boys tipping over and trying to tear out parking signs, and has observed fighting in the neighborhood (J. A. 79). He cited one instance where he had been threatened by a youngster while standing on a street corner near his home (J. A. 80). He also cited instances of individuals pounding on his door in the evening, and one occurrence

in which a drunken youth "reeled" through his patio door and threatened him (J. A. 80-81).

In addition to the foregoing, the Board received formal protest petitions signed by 271 owners and residents of the area, 152 individual protest letters, 169 protest telegrams, and a protest petition signed by 92 individuals, most of whom were Georgetown residents, who appeared at the hearing. The Board also received formal consent petitions signed by 32 individuals, none of whom live in Georgetown, 186 consent telegrams, most of which were identically worded, and a consent petition signed by 33 individuals, most of whom lived outside of Georgetown, who appeared at the hearing.

On December 28, 1965, the Board, with appellee Tyson dissenting, entered detailed findings of fact, conclusions of law, and its order denying both applications. The Board found, among other things, "[t]hat the requirements of Section 14(a)5 of the Act^[3] have not been met as proved by the widespread and intense opposition of 'the persons residing or owning property in the neighborhood of the premises for which the license is desired.' " (J. A. 86, 93.)

³ Section 25-115(a)5, D. C. Code, 1961.

Proceedings before the Board in Appeal No. 20, 196
(Roundtable Restaurant)

At the commencement of the proceedings before the Board on January 25, 1966, appellant submitted a written motion that appellee Wyckoff disqualify himself, or, in the alternative, that the Board disqualify him from participating in the proceedings (J. A. 129). It is stated in the motion that " * * * no criticism is herein made of Mr. Wyckoff whom counsel knows is of the highest integrity and for whom counsel has the highest regard, * * * " but because he has received from the Association copies of its news bulletins denouncing the conditions on M Street, he is rendered ineligible to participate in the proceedings. Attached to the motion was an affidavit of Mr. Wyckoff, which he had filed in another case previously before the Board, in which it is averred that Mr. Wyckoff was appointed to the Board on August 20, 1965, that he has been a resident of Georgetown since 1922, that during such time he has been a member of a citizens' association, that he was, prior to his appointment to the Board, chairman of a Parks Committee of the Association and, for a short period, secretary of the Association, that, upon being appointed to the Board, he discontinued active participation in the Association and no longer attends its meetings, although he is on the Association's mailing list

and receives correspondence mailed to the membership at large, and that "I have no bias concerning the instant applications for any reason whatsoever and will decide the merits of these applications upon the facts presented to the Board, upon materials contained in the administrative record, and upon the prevailing law" (J. A. 137).

Appellant's counsel, at the hearing before the Board, stated " * * * I want to make it very clear that I accept Mr. Wyckoff's affidavit, as I should and must, as the entire truth without any reference or innuendo or implication that what he has given in his affidavit on January 17, is not completely in accordance with the fact" (J. A. 143).

In support of the motion, appellant called only the secretary of the Association, stating " * * * I should like to put him on the stand first in order to elicit facts upon which my motion is based" (J. A. 140). The facts elicited were that the Association sent out news bulletins to its members, including Mr. Wyckoff (J. A. 141), deploring the M Street situation. Appellant was not mentioned by name in any of the news bulletins (J. A. 141). The Association also sent a post card notice to all its members except Mr. Wyckoff setting forth the time and place of three hearings on applications for Class C liquor licenses. The only action taken by the Association with reference to appellant's application was at a meeting on

January 10, 1965, wherein the Association voted to support the residents and property owners in the vicinity of appellant's establishment in their opposition to the granting of the license for the year beginning February 1, 1966 (J. A. 142). The Association did not protest the granting of the application and did not participate in the hearing, although it feels equally as strongly about appellant's application as it did about the other few it had protested (J. A. 142).

The Board, by a unanimous decision, denied the motion, but offered to suspend the hearing in order that appellant might initiate legal proceedings to resolve the matter. Appellant declined the offer, and the Board proceeded with the hearing.

A number of police officers were called by appellant. Each of them had made regular and periodic visits to the Roundtable, and had found it to be well supervised, with no indication of any disorder or intoxication inside the building. The officers stated, however, that the police have received complaints of different types of disorders in the vicinity of the Roundtable. One of the officers, Private Johnson, had, two weeks prior to the hearing, arrested an 18-year-old Maryland youth who was using profanity and jumping on the trunk of a car parked around the corner from the Roundtable (J. A. 146-147). This officer has had similar complaints from residents of

the area, and also complaints of public urination, snapping of automobile aerials, and other vandalism (J. A. 147). He, personally, has, in the last year, made five or six arrests of teenagers for public urination in the block immediately behind the Roundtable (J. A. 147-148). The officer stated that parking was a problem in that neighborhood, and that No. 7 Precinct utilized several tow trucks, especially on weekends, to rid the neighborhood of illegally parked automobiles. The tow trucks are particularly active in the block north of the Roundtable. (J. A. 149.) He has also observed an increase, in the last year, in the number of beer cans and other trash scattered in the streets in the vicinity of the Roundtable (J. A. 149).

Another officer, Private Redmond, related instances of vandalism in the vicinity of the Roundtable. He stated that there has been an increase in the number of complaints of noise since the opening of the Roundtable (J. A. 154), and that he has observed more rowdiness in the area in the last year (J. A. 154). On Friday and Saturday nights he has seen crowds of 25 to 30 people waiting to get into the Roundtable, and, on occasions, has had to talk to the management of the Roundtable about keeping the patrons from blocking the sidewalk.

A police sergeant testified that he gets excellent cooperation from the owner of the Roundtable. Specifically, he stated that if they are looking for a known criminal or suspected criminal " * * * that may frequent some of these places we notify the management and request them if these particular people should come into the premises we'd appreciate it if they'd call us." The officer stated that the officers of the Roundtable have done this on numerous occasions. (J. A. 156-157.)

Two young, single girls who have visited the Roundtable testified that the place is well run, that mostly young people go there, and that the Roundtable plays rock and roll music (J. A. 162).

Riley B. Carter stated that he and one George Berman each own 50 per cent of the stock in the corporation, and that they devote all their time to the operation of the business (J. A. 161). They owe \$26,400 on their unexpired lease, and \$70,00 of the \$90,00 they borrowed to refurbish and furnish the building (J. A. 163). He said that they fashioned the establishment after "Bassin [sic] Street East" in New York, which he described as being "[a] supper club where people come in and eat and drink and see various forms of entertainment in a plush surrounding" (J. A. 164). They intended to specialize in steak and roast beef, and to appeal to a clientele of 35 years of age

and older (J. A. 164). It was elicited from the witness and his partner, however, that they intended to open with Mr. Berman, who has had very little cooking experience, being the chef (J. A. 182-183), that they at no time have had an automatic dishwasher (J. A. 180), that about seventy of their tables are 20 inches square (J. A. 171), that in executing their lease on July 4, 1964, they made provision for the use of the premises for purposes of a public hall (J. A. 173), that, on December 15, 1964, 20 days after opening their establishment, they applied for a public hall license (J. A. 174), that the public hall license was obtained on December 29, 1964 (J. A. 174), and that they have been charging an admission fee since that time (J. A. 174).⁴ The public hall license states that the establishment can accomodate 260 people, although Mr. Carter says their accommodations are geared to around 220 (J. A. 176). The establishment has one ladies' room, which contains a sink and a bowl, and one men's room, which contains a sink, bowl, and urinal (J. A. 175-176). They have no parking facilities for their patrons, although Mr. Carter stated that, on the day before the hearing, he entered into an oral

⁴ Public hall licenses are required for places of public assembly where an admission fee or cover charge is imposed (Section 47-2320(c), D. C. Code, 1961).

agreement with the owner of a parking lot whereby the Roundtable could lease the lot on a month-to-month basis at a monthly rental of \$100 (J. A. 167-168, 180). There was also testimony that, on many occasions, the Roundtable purchased coffee for their patrons from a nearby restaurant (J. A. 205).

At the hearing on May 20, 1964, when appellant first applied for a liquor license, Mr. Berman, in response to the question, "Do you intend to use this place as a rock and roll place?", stated, "No, we do not" (J. A. 123). Later in the same hearing it was asked, "Could we hear that there will not be a rock and roll club there?", and appellant's attorney, with the approval of Mr. Berman, replied, "We'd be delighted to state that" (J. A. 184). The Police Department, which had information that appellant planned to open a rock and roll establishment, withdrew its objection to the application after receiving assurances from Mr. Berman that they were going to have a nice, moderately-priced restaurant, catering to an adult group, where the entertainment would be provided by a hi-fi set or by a piano player (J. A. 123, 189-190).

At the protest hearing on January 25, 1966, various witnesses, including representatives of the Police Department, testified that the Roundtable had a rock and roll band on its opening night (J. A.

157, 191, 204). One of the witnesses described rock and roll as " * * * a very harsh rhythm like you hear on radio stations kids listen to, my kids, everybody's kids, I guess" (J. A. 204). A teenager, who had visited the Roundtable around December of 1964, stated that they had a rock and roll band at that time (J. A. 214). He stated that the band had electric guitars and drums, and, when asked to describe rock and roll, stated, "It's not jazz, classical or anything like that, it's pure rock and roll is what I call it" (J. A. 214). Witnesses who have been in the Roundtable since the opening night have found that it still features rock and roll bands (J. A. 150, 162, 204, 212). There was also testimony that the Roundtable charged admission on opening night (J. A. 205).

Mr. Berman denied that they opened with a rock and roll band, and denied that they operate a rock and roll establishment (J. A. 183). Mr. Carter stated that they opened with a singer (J. A. 164), and that they changed their entertainment 60 to 90 days after opening in order to appeal to a larger segment of the community (J. A. 165-166). He denied that they have ever featured rock and roll (J. A. 166), but on cross-examination admitted that they had a "Sandusky" group in December of 1964, which used electric guitars, and had, during the same period, the "Edward Jones" group, but was vague

as to whether they used electric guitars (J. A. 171). He couldn't remember whether they had hired the "British Walkers," a rock and roll group, shortly after they opened, and stated that they have no records which would reflect what groups they have had (J. A. 169-170). Both he and Mr. Berman were vague as to whether, shortly after opening, they had purchased spot announcements on two radio stations which appeal to teenagers, advertising that the Roundtable was featuring rock and roll music (J. A. 178, 180). Mr. Carter would merely state, "It's very possible we did," that he let the manager handle most of the advertising, and that they have no records respecting such advertisements (J. A. 178). Mr. Berman stated that he had no knowledge of the substance of radio announcements-- that he let the radio people take care of it.

Mr. Carter admitted that the Roundtable has had two fights inside the establishment, but denied any knowledge of a knifing incident in front of the establishment in February of 1965, involving him and the manager of the Roundtable (J. A. 181). Mr. Berman, too, denied any knowledge of any such knifing incident (J. A. 184.) Later, however, on rebuttal, after the police had related the details of the incident wherein Mr. Carter was cut on the ear and the manager cut on the forehead and side by a patron of the Roundtable (J. A. 187-

188), Mr. Berman stated that the fight was seven or eight doors away from his establishment (J. A. 215).

Many of the residents of the area of the Roundtable appeared at the hearing and testified to the large increase in parking problems, noise, litter on the streets, drinking in parked automobiles, public urination, snapping of automobile aerials, and other vandalism and annoyances since the advent of the Roundtable. One Gardner Palmer, who has lived around the corner from the Roundtable for the last nine years, stated that the area was quiet and that he had no difficulty in sleeping through the night prior to the opening of the Roundtable (J. A. 185). Now, he is awakened on the average of once a week around 2:00 a. m. by the noise created by teenagers (J. A. 185-186). The noise from the establishment itself disturbs him in the use of his garden (J. A. 186). He has observed youths drinking in parked automobiles, and, on one occasion, while entertaining guests, the empty beer cans were thrown against his front door (J. A. 186). He stated that the area is "festooned" with empty beer cans, which was not the case prior to the opening of the Roundtable (J. A. 186-187). In addition, the parking has become intolerable, and cars with Maryland and Virginia tags frequently park in front of his driveway preventing him from using his garage. He has called the police

at least 15 times in the last year to have such illegally parked cars removed (J. A. 186).

Captain Kennedy, Commander of the 7th Police Precinct, presented statistics of the increased crime in the area. He feels that the Roundtable contributes to both the parking problems and other complaint problems. (J. A. 187.) He spoke of a fight in front of the premises, of various disturbances inside the building (J. A. 187-189), and of an occasion where a pedestrian was severely assaulted by two of five young men who had been ejected from the Roundtable (J. A. 188-189).

Leigh Miller, who lives one block north of the Roundtable, found very little street and pedestrian traffic and had no difficulty in finding a parking place near his home prior to the opening of the Roundtable (J. A. 199). After such opening, he has found parking very difficult, frequent incidents of noise, an item stolen from his front door, the gear shift and handbrake of his parked automobile damaged, youths sitting in parked automobiles drinking beer, and empty containers left on the streets, sidewalks, and private property. He and his children have frequently been awakened by shouting, obscene language and filthy epithets. (J. A. 199-202.) Another individual stated that, on several occasions during the summer and

fall of 1965, he had observed individuals urinating in front of his house (J. A. 203).

Tedson Meyers, of 1237 - 28th Street, related an incident where, upon being asked to turn down a radio blaring in an automobile parked in front of his house, one of a group of youths in the car kicked the door of his house. The group then proceeded down the hill toward the Roundtable. (J. A. 208.) Later, around 1:45 a.m., they returned, kicked his door, called him and his wife vile names, and one of the youths proceeded to expose himself and urinated in the street in full view of Mr. Meyers and his wife (J. A. 209). After this incident, he began to walk his dog at all hours of the evening, and began to observe the pattern of what went on in the neighborhood (J. A. 209). He observed young men park their cars, sit for a while drinking beer, and deposit the empty containers on the streets, sidewalks, or someone's private property. They would get out of their cars, and he would follow them to the Roundtable, where they frequently would have to wait in line to get inside. (J. A. 209-210.) Mr. Meyers observed youths urinating in the street, and would frequently ask such questions as, "How is it in the Roundtable?" or "Is it pretty jammed in there tonight?", and thereby confirm in his mind that they had been at the Roundtable (J. A. 210-211). At no time did he receive a reply

such as, "No. we weren't at the Roundtable." The witness had followed groups of youths who had left the Roundtable, and had seen them urinate in public, knock on doors and run, and, on one occasion, knock down a barricade which had been erected around an excavation (J. A. 211-212).

Mr. Meyers had various conversations with Mr. Berman regarding the operation of the Roundtable. On one occasion, Mr. Berman stated that " * * * he wanted us to know how hard they were trying to keep a decent place, that they had enough trouble because of gamblers and pushers trying to do business with these kids and therefore they take every effort to keep them out of the place on the street instead where they belong" (J. A. 206). In another conversation, Mr. Berman stated, "Look, someday we want to run this place like a regular restaurant but right now we've just got to kind of make our money out of it because we've got a lot wrapped into it, so, we've got to run it as a rock and roll place" (J. A. 207). Mr. Berman, on rebuttal, denied having made such statements.

In addition to the foregoing, the Board received formal protest petitions signed by 259 owners and residents of the area, and 44 individual protest letters and telegrams. The Board also received formal consent petitions signed by 63 owners and residents of the

area, together with several hundred signatures of patrons of the restaurant from the metropolitan area and beyond. (J. A. 309.)

On January 29, 1966, the Board, with appellee Tyson dissenting, entered detailed findings of fact, conclusions of law, and its order denying the application. The Board found, among other things, "[t]hat the principal officers of the applicant corporation do not meet the requirements of Section 14(a)1, which calls for such officers to be 'of good moral character and generally fit for the trust to be in [them] reposed,' " and that "[t]he premises are not appropriate under terms of Section 14(a)5 [of the Act], " which provides that before such an application can be granted the Board must find "[t]hat the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood * * * " (J. A. 310-311).

SUMMARY OF THE ARGUMENT

Appellants have set forth no reason which would warrant the disqualification of Mr. Wyckoff. The so-called secret and ex parte communications, which consisted of new bulletins, were sent to all members of the Association, and the substance of the bulletins was

common knowledge of the residents of the whole metropolitan area. Furthermore, Mr. Wyckoff had demonstrated his impartiality by voting, over the protests of the Association, to license other establishments, all of which are located closer to his home than any of appellants' establishments.

Under the prevailing statute, the Board is required, at the beginning of each license year, to determine the moral qualifications of the principal officers of an applicant, and the appropriateness of the establishment for the neighborhood. The statute law has been consistently construed in this manner. The Board stated, in its findings, that it weighed all the evidence, including appellants' equities. Appellants were fully aware of the issues to be resolved by the Board, and were not prejudiced in any respect.

The authority of the court below was limited to a review of the administrative record. That record supports the findings of the Board that Mr. Wyckoff was not biased or disqualified from participating in the proceedings, that none of the appellants' establishments are appropriate for the area, and that the principal officers of appellant Roundtable do not possess the moral qualifications that are necessary to obtain a license. Under such circumstances, the court below properly entered summary judgment for appellees.

ARGUMENT

I

The Board did not err in refusing to disqualify appellee Wyckoff.

At the very outset of each of two hearings before the Board, the respective appellants filed written motions to disqualify appellee Wyckoff from participating in the proceedings. Counsel for the Roundtable conceded in his motion, as he does in his brief, that Mr. Wyckoff "is of the highest integrity," but alleged only that the Association, by sending Mr. Wyckoff copies of its news bulletins, which were critical of the Georgetown liquor establishments in general, placed him "in a most untenable position" (J. A. 143-144). Counsel for the other appellants advanced the same argument in support of their motion, and, in addition, argued that Mr. Wyckoff was biased by reason of his residing so close to their establishments. Appellant Roundtable was granted a full and complete hearing by the Board on the issue of disqualification, and appellants Peppermint Lounge and Corral Cafe were permitted to argue their motion and to make a full proffer in support of the motion. Neither the evidence and the proffer nor the depositions, subsequently taken, of Mr. Wyckoff and of the president of the Association,, revealed anything of substance that was not contained in the affidavits of Mr. Wyckoff.

The record is perfectly clear that, in judging these cases, Mr. Wyckoff was not influenced by the fact that he lives in Georgetown, by his past affiliations with the Association, or by anything contained in the Association's news bulletins. During the same general period that appellants' applications were being considered by the Board, Mr. Wyckoff voted with the other members of the Board to grant the applications of the Crazy Horse, located at 3259 M Street, N. W., Mac's Pipe and Drum, located at 3403 M Street, N. W., and Paul Cooper's Town House, located at 1365 Wisconsin Avenue, N. W. (J. A. 247). The Association protested the issuance of licenses to the Crazy Horse and Paul Cooper's Town House, and individual residents protested the issuance of a license to Mac's Pipe and Drum. Furthermore, the Crazy Horse is located immediately next door to the Peppermint Lounge and the Corral, and the other two establishments are located closer to Mr. Wyckoff's home than any of appellants' establishments.

Appellants have gone to the extreme in attempting to relate the facts and issues involved here to those in Jarrott, et al. v. Scrivener, et al., 225 F. Supp. 827 (D. C., 1964). There, high government officials made telephone calls and had secret conferences with members of an administrative agency, which had a matter pending before it. All that transpired here was that the Association mailed

to Mr. Wyckoff, as well as to other members of the Association, a copy of its news bulletines which were critical of the Georgetown taverns in general. The Roundtable was not mentioned by name, and the other two appellants were mentioned by name only once. There is no allegation that Mr. Wyckoff has ever been approached in reference to any of the Georgetown taverns, and he unequivocally stated, under oath in the presence of the trial judge, who was in a position to judge his demeanor and who was obviously impressed with his candor, that at no time has he been contacted by anyone regarding any matter concerning the Board (J. A. 249).

Equally as extreme and without substance is appellants' hyperbolic characterization of the Association's news bulletins as being "ex parte" and "secret." Copies of the bulletins were mailed to each of the 1750 members of the Association, and the substance thereof was common knowledge of the residents of the whole metropolitan area. The Georgetown Spectator and The Washington Post newspaper, for example, have commented on the tavern problem in Georgetown on various occasions. (See the January 12, 1966, edition of the Georgetown Spectator, articles appearing in the December 24, 1965, and January 24, 1966, editions of The Washington Post, and an editorial appearing in a January 1966 edition of The Washington Post.)

Furthermore, appellants were obviously aware of these "secret" bulletins, because they quoted from them extensively in their motions for disqualification.

This Court, in the case of United Air Lines, Inc. et al. v. Civil Aeronautics Board et al., 114 U. S. App. D. C. 17, 309 F. 2d 238 (1962), found conduct of a much more serious nature than that alleged here to be insufficient to show a "corrupt tampering with the adjudicatory process itself." There, certain litigants had caused letters to be submitted to the Board in violation of the Board's Rules. The Court upheld the Board's finding that the effect of the communications had not been substantial, stressing the fact that the letters had been placed in the public file and were available to the other litigants. See also Shaughnessy v. Accardi, 349 U. S. 280 (1955).

Mr. Wyckoff was questioned closely, in the presence of the trial judge, relative to his participation in Association matters. He stated that he had no recollection of any discussions of the Georgetown tavern problem in any of the meetings of the Associations he had attended (J. A. 241), and that, while secretary, he attended just one meeting of the Executive Committee, but has only a vague recollection that another establishment was discussed (J. A. 246). He did not

seek the appointment to the Board, and did nothing to further his appointment (J. A. 238-239). Furthermore, no showing, whatsoever, was made that the Association did anything to further his appointment to the Board.

Mr. Wyckoff has devoted a major portion of his life to work on civic affairs. It was this sense of responsibility that led him to accept an appointment to the Board. Upon receiving the appointment, he resigned active membership in the Association. By so doing, he has gone beyond that which is required of judges and quasi-judicial officers. As the Court said in the case of Appeal of Askounes, 144 Pa. Super. Ct. 293, 19 A. 2d 846, 848 (1941), where a liquor licensee, who was found to have served alcoholic beverages to minor college students, unsuccessfully attempted to disqualify the trial judge who was a member of the Board of Trustees of the college:

"A judge, on assuming office, is not required nor expected to resign, or refuse to accept, membership on the governing bodies of religious, charitable or educational institutions. Like other men he may perform such civic duties as specially interest him. * * * "

See also Eisler v. United States, 83 U. S. App. D. C. 315, 170 F. 2d 273, cert dis., 338 U. S. 883 (1949); Brinkley v. Hassig et al., 83 F. 2d 351 (10th Cir. 1936); United States v. Gilboy et al., 162

F. Supp. 384 (M.D. Pa. 1958); and Cole v. Loew's Inc. et al., 76 F. Supp. 872 (S.D. Cal. 1948).

Although a substantial showing of bias is required to disqualify an officer in any administrative proceeding (United States ex rel. De Luca v. O'Rourke, 213 F. 2d 759 (8th Cir. 1954)), an even greater showing must be made in a case such as this where the Congress has provided for the appointment of only three Board members, and the participation of all three members may be necessary in order to obtain a unanimous decision. In the case of Bob White's, Inc. v. Young, et al., C. A. 622-50 (1950), which is similar to the cases now under consideration, the Board and the parties were confronted with the problem of a split decision. The chairman, with the approval of the applicant, disqualified himself, and the remaining two Board members could not reach a unanimous decision. The late Chief Judge Laws ruled that absent a majority in favor of the issuance of the license, the license could not issue. He also ruled that, since the applicant acquiesced in the disqualification of the Board member, he submitted himself to the risk of a divided vote and was not, therefore, entitled to another Board hearing.

It is significant that appellants' motions for disqualification were based on information known to them long before the commence-

ment of the hearings. Their failure to timely file such motions is sufficient, in and of itself, to justify their denial. North American Airlines, Inc., et al. v. Civil Aeronautics Board, 100 U. S. App. D. C. 5, 12, 240 F. 2d 867, 874 (D. C. Cir. 1957).

In any event, all the Board members were in agreement that appellants made no substantial showing which would warrant Mr. Wyckoff's disqualification. The trial judge, upon review of the record and after observing Mr. Wyckoff undergo extensive examination on the issue, was in full agreement with the Board. Appellants have pointed to nothing which would warrant any contrary finding. Therefore, the unanimous decision of the Board, approved by the trial judge after independent inquiry, should be affirmed. This is particularly true since each of the appellants, after making their record on this issue before the Board, expressly rejected the offer of the Board to suspend the hearing in order that appellants might institute legal proceedings to resolve the issue.

II

By weighing all the evidence and making a determination that appellants' establishments are not appropriate for the neighborhoods and that appellant Roundtable's principal officers are not of good moral character, the Board merely followed the statute as authoritatively interpreted by this Court.

Section 13 of the District of Columbia Alcoholic Beverage Control Act of January 24, 1934, ch. 4, 48 Stat. 319, 327, as amended (Section 24-114, D. C. Code, 1961), specifically provides to the issuance of alcoholic beverage licenses for a period of one year. It is clear from the legislative history of the Act that the Congress purposely limited the duration of such licenses, and fully intended that the applicant in each succeeding year demonstrate his worthiness of a license, and the appropriateness of the establishment for the neighborhood. See Joint Hearings before the Committees on the District of Columbia of the United States Senate and House of Representatives, 73rd Cong., 2d Sess., on H. R. 6148 and H. R. 6181, pages 44-45, and 78-80.

Any question which may have existed as to the duty of the Board when passing upon "renewal" applications was resolved by this Court in Minkoff v. Payne et al., 93 U. S. App. D. C. 123, 127, 210 F. 2d 689, 693 (1953). The Court said:

" * * * It seems clear from the statute, particularly § 25-114, that Congress intended these licenses to be issued only for a year at a time. This no doubt was to afford a means of continuing supervision. There accordingly comes into operation at the time of each renewal the qualification provision of § 25-115, supra, requiring the Board to be satisfied as to the good moral character and fitness of an applicant. * * * We see no escape from the conclusion that the same qualifications required for an original license remain for Board consideration as recurring applications for renewals or new licenses are made. * * * "

Appellants do not directly challenge the above as being an accurate statement of the law. In fact, appellant Roundtable expressly states in its brief that it " * * * does not challenge appellees' statement that Congress intended that these licenses be issued only for a year at a time to afford a means of continuing supervision * * * , " and that it " * * * concedes that the Board has the duty and obligation to assure itself that all licensees or principal officers of licensees are fit for the trust to be in them reposed. "

The argument of all the appellants is that, whereas the Board formerly considered an applicant's equities in determining whether a license should be reissued, the Board here, without notice to the parties, allegedly changed its standards and ignored appellants' equities.

The administrative records, however, do not support such an argument. There is nothing in any of the Board's findings from which it can be inferred that the Board was unmindful of and gave no consideration to the fact that the appellants have invested substantial sums in their businesses. In fact, the Board specifically said, on page 5 of its findings in the Roundtable case, that:

'In his closing argument, applicant's counsel maintained that the existence of a license, along with the substantial investment of money and the principals' economic dependence on it, require the Board to interpret Section 14(a)5 of the Act differently in applications, such as this one, which are not original. The Board is certainly mindful of the equities on both sides as it weighs the testimony and evidence. Nevertheless, it is the opinion of this Board that the intent of Congress, as expressed in the wording of the Alcoholic Beverage Control Act, * * * require holders of alcoholic beverage licenses to comply with all provisions of the Statute prior to each annual issuance of a new license just as fully as do original applicants for such licenses. Knowing that conditions change, especially in such a sensitive area, Congress specifically provided for annual licenses and nowhere in the Act referred to 'renewal'. Whether or not long-standing customs of cursory review or of giving preponderant weight to the equities involved in an existing enterprise may have lulled or misled some licensees into believing otherwise does not alter this statutory obligation of the

Board. Therefore, the Board has heard the instant case and weighed the testimony on this basis." [Emphasis supplied.]

It is apparent from the foregoing that the Board was mindful of the equities involved in the cases, but was also mindful that appellants must comply with the statutory requirements. Appellants urged upon the members of the Board that they, as appellants contend other Boards had done, should give preponderant weight to the fact that appellants have existing and profitable businesses. The Board rightfully refused to place any preponderant weight on this one aspect of the case, but weighed this factor along with all the other evidence in the case. The law requires no more and tolerates no less.

The Board found, as a separate and independent reason for denying the application of appellant Roundtable, that its principal officers do not possess the moral qualifications necessary to obtain a license. Appellant Roundtable argues that it was not aware that the moral fitness of its officers would be in issue, and that it was, therefore, denied due process of law.

The short answer to appellants' argument is that the law requires an applicant, at the beginning of each license year, to satisfy the Board that its principal officers are of good moral character. Aside from this, appellant Roundtable, prior to the hearing, received

written notice that the question of the moral fitness of its officers, as well as the appropriateness of its establishment, was to be contested by the protestants (J. A. 127-128).

From the foregoing, it is apparent that appellants beg the question when they assert that the Board, in considering an application for a "renewal," should weigh the applicant's equities, because the Board here did, in fact, consider and weigh appellants' equities. Appellant Roundtable also begs the question when it says that the Board, prior to a consideration of the question of the moral fitness of an applicant's officers, must place the applicant on notice, because appellant here was, in fact, placed on notice. It is clear, therefore, that their assertions in this regard are entirely without substance.

III

There is in the administrative record substantial evidence to support the findings of the Board that appellants' establishments are not appropriate for the neighborhood in which each is located.

Section 14(a)5 of the District of Columbia Alcoholic Beverage Control Act, supra (Section 25-115(a)5, D. C. Code, 1961), provides that before a license may be issued, the Board shall satisfy itself

"That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

The wishes of the persons residing or owning property in the neighborhood of each establishment involved here is evidenced not only by the number of letters and telegrams received by the Board and the number of witnesses appearing at the hearings, but also by the detail with which the residents of the area have painstakingly outlined the deleterious effects which the establishments are having on the neighborhoods. As the Board observed in its findings in the Peppermint Lounge and Corral cases, the wishes of the residents " * * * are not based on hypothetical or imaginary fears, nor are they based on indiscriminating opposition to all licensed establishments." Instead "[t]hey are based on extensive and intensive personal experiences with the * * * establishment[s]." (J. A. 90, 97.)⁵

The evidence of the overcrowding of the streets, the vandalism, the obscene conduct, the filthy language, and the other conduct demon-

⁵ The Association has, in the last license year, opposed only 4 out of 38 applications for Class C liquor licenses in Georgetown (J. A. 116).

strating a total lack of respect for individual and property rights of the people within the vicinity of appellants' establishments is set forth in the administrative record, summarized briefly in the Board's findings and to a greater extent in the counter-statement of the case. No worthwhile purpose would be served by restating the evidence here. Appellants, by arguing that the police rather than they are responsible for the conduct of the patrons while such patrons are on the streets, have missed the whole point of the statute. The question is not so much one of responsibility, but whether an establishment which produces such conditions is appropriate for the neighborhood.

Based upon the evidence of the increase in crime, the inconvenience, the indecencies, and the vandalism in the area since the advent of the present operation of appellants' establishments,⁶ one is led to the unalterable conclusion that appellants' establishments are not appropriate for the neighborhoods in which they are located.

⁶ The fact that liquor licenses have been in existence at some of these locations for a period of years is of little significance. One type of operation may be appropriate for a neighborhood, whereas a changed operation at the same premises may be inappropriate. Appellant Peppermint Lounge, for example, changed its whole operation on June 18, 1965, from an Arabian restaurant to a rock and roll place (J. A. 46-48).

IV

Appeal No. 20,196 (Roundtable Restaurant)

The finding of the Board that the principal officers of appellant Roundtable lack the necessary moral qualifications to obtain a license is substantially supported by the administrative record.

In order to obtain a license, it was incumbent upon appellant to satisfy the Board that each of its principal officers and directors are " * * * of good moral character and generally fit for the trust to be in him reposed" (Section 25-115(a)1, D. C. Code, 1961). Appellants contend (1) that, since the Board considered the moral qualifications of its officers at the time its license was first issued, the Board is estopped from later considering such matter, and (2) that the administrative record does not support the finding of the Board that the principal officers of the Roundtable are not of good moral character.

There are two answers to appellant's first contention. First, in Minkoff v. Payne et al., supra, where the findings which led to the Board's action related to prior misconduct, this Court said, " * * * The moral character and fitness of the appellant are not necessarily predetermined forever by what then was found to have occurred. " Secondly, the misconduct which led to and supports the findings of the Board occurred after the issuance of the original license. It

should be noted, in this regard, that the original license was issued on November 25, 1964, and that appellant had hardly commenced operations when the license year expired.

Also lacking in substance is appellant's second contention that the administrative record does not support the Board's finding of lack of good moral character. At the hearing on the original application for a license, the principal officers told the Board, under oath, that they were not going to operate a rock and roll establishment. Prior thereto, they told the Captain of No. 7 Police Precinct that they were not going to open a rock and roll establishment, but that they were going to open a nice, moderately-priced restaurant catering to an adult group, where the entertainment would be provided by a hi-fi set of by a piano player. Upon the basis of such a representation, the Police Department withdrew its objection to the granting of the license.

Appellant says that its officers did not purposely deceive the Board and the Police Department, and tries to justify its representations and subsequent conduct by stating that business was bad in the beginning, and that it had to change the type of entertainment to appeal to a broader segment of the people. This flimsy explanation further illustrates the lack of moral character on the part of its

officers, because there was substantial evidence, as set forth in detail in the counter-statement of the case, that the doors of the building were designed for a rock and roll establishment, and that appellant had a rock and roll band and charged admission on the opening night and on every night thereafter. Furthermore, they were less than candid in much of their testimony at the January 1966 hearing with respect to the operation of their business, and with respect to a fight involving one of the principal officers.

The evidence in support of the Board's finding is not only substantial, but overwhelming.

V

Appeal No. 20,194 (Peppermint Lounge and Corral Cafe)

There was no issue of fact to be litigated in the court below.

Appellants Peppermint Lounge and Corral contend that an issue of fact remained to be litigated in the court below, and that the action of the court in granting summary judgment to the appellees was, therefore, premature.

Appellants have not specifically said what factual issue is involved in the case, but apparently it has some reference to the

question of the disqualification of Mr. Wyckoff. They complain that the motion for summary judgment " * * * was heard shortly after the Court had denied the taking of two depositions of persons connected with the appointment of one of the defendants [and that] * * * the Motion was granted presumably without considering the facts brought out at the deposition."

Although appellants had originally moved the court to take the depositions of Commissioner Tobriner and Mrs. Shackleton, the appellants, after taking the depositions of Mr. Wyckoff and the president of the Association, apparently abandoned their plan to depose the other two.⁷ At the hearing on the motions for preliminary injunctions, appellants were afforded an unlimited opportunity to substantiate their claim that Mr. Wyckoff was biased. They were satisfied to offer into evidence the depositions of Mr. Wyckoff and the president of the Association without calling them or Commissioner Torbiner and Mrs. Shackleton as witnesses. They can hardly be heard to complain now.

⁷ Appellants' counsel specifically told the trial judge, during the deposition of Mr. Belin, that he would not need to take the deposition of Commissioner Tobriner (Dep. 41).

But more important than the fact that the trial court permitted appellant to make a record on their allegation that Mr. Wyckoff was biased, is the fact that these appellants were permitted to make such a record before the Board. The law is well settled that issues such as this must be resolved at the Board level, subject, of course, to a judicial review of that administrative record.

In the case of United Air Lines, Inc. et al. v. Civil Aeronautics Board et al., 114 U. S. App. D. C. 17, 309 F. 2d 238 (1962), the Court remanded the case to the administrative board to receive evidence and to make a determination of whether certain ex parte communications substantially impaired the administrative process. Thereafter, the Court, upon review of the findings of the Board, stated

"Consideration of the record as submitted convinces us that the Board's findings are supported by the record
* * * ."

See also Securities and Exchange Commission v. R. A. Holman & Company, Inc., 116 U. S. App. D. C. 279, 282, 323 F. 2d 284, 287 (D. C. Cir. 1963), where the Court said that " * * * [t]he party asserting disqualification must make his record in the administrative hearing. "

In view of the foregoing, the court below was not required to look, and, indeed, would not have been justified in looking, beyond the administrative record.

CONCLUSION

It is respectfully submitted that the judgments of the court below were, in all respects, correct, and should, therefore, be affirmed.

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REPLY BRIEF FOR APPELLEE
THE CITIZENS ASSOCIATION OF GEORGETOWN
TO BRIEF OF AMICI CURIAE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

NO. 20,194

KAYCEE, INC., and
SEABRIGHT, INC.,

Appellants,

v.

JOY R. SIMONSON, ET AL.,
Individually and Comprising the Membership of the
Alcoholic Beverage Control Board, and
THE CITIZENS ASSOCIATION OF GEORGETOWN,

Appellees.

ON APPEAL FROM
THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 19 1966

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REPLY BRIEF FOR APPELLEE THE CITIZENS ASSOCIATION OF GEORGETOWN TO BRIEF OF AMICI CURIAE

**An Existing Licensee Must Meet the Same Standard
for Issuance of an Alcoholic Beverage License
as an Applicant for a New License**

The *Amici* argue that the District of Columbia Alcoholic Beverage Control Act supports the proposition that an existing licensee is entitled to more consideration in applying for a license than is an applicant for a new license.

The words of the Act and their interpretation by this Court demonstrate the fallacious and delusive nature of this position.

Amici note the only two distinctions in the Act between original and so-called "renewal" applications. These two exceptions were interpreted by this Court to indicate that all applications should be treated the same by the A.B.C. Board. *Minkoff v. Payne*, 93 U.S. App. D.C. 123, 127, 210 F.2d 689, 693 (1953).¹

The other distinctions noted by the *Amici* are either contained in the Procedural Rules of the Board and are related to the two distinctions in the Act noted above, or are unwritten internal practices of the Board designed to ease the heavy annual licensing work load. During the few weeks before January 31 of each year, when all annual licenses expire, the Board must process more than 1,800 applications for re-issuance of licenses.²

The reliance of *Amici* upon the case of *Charles D. Kaier Co. v. Doran*, 42 F.2d 923 (D. E.D. Pa. 1930), is particularly surprising and perhaps illuminating. This case, which evidently involved the manufacture of "high-powered beer" during Prohibition, was reversed on appeal. *Doran v. Charles D. Kaier Co.*, 60 F.2d 259 (3rd Cir. 1932).³ In reversing, the Court quoted with approval *Campbell v. Galeno Chemical Co.*, 281 U.S. 599, 609 (1930): "Every permittee applying for a renewal has the burden of establishing his fitness."

Amici also rely upon *Rowe v. Colpoys*, 78 U.S. App. D.C. 75, 137 F.2d 249 (1943), for the proposition that there is an inherent property

¹ A more detailed discussion of this point is contained in the Brief of Appellee The Citizens Association of Georgetown, p. 25-27.

² See, Annual Report, Fiscal Year 1966, District of Columbia Alcoholic Beverage Control Board.

³ On rehearing, the judgment of the District Court was affirmed because of failure to join an indispensable party. 60 F.2d at 260.

right in a liquor license. That case, however, held only that an alcoholic beverage license was subject to levy, under execution, to satisfy a court judgment because the license was transferable.

The reliance of *Amici* upon *Hornsby v. Allen*, 326 F.2d 605 (5th Cir. 1964), rehearing denied 330 F.2d 55, is similarly misplaced. The extreme facts in that case showed that the applicant was not afforded a hearing on her application for a liquor license, but was subjected to a system whereby the local ward alderman exercised arbitrary power in approving or disapproving such applications within his territory. There was no opportunity afforded the applicant to cross-examine witnesses; no objective standards for applicants were set out by the authorities through reasonable regulations promulgated by the board. No analogy can be made to the instant case from such facts.

Other arguments made by *Amici* deserve only passing mention. The assertion that the hearing Appellants received before the A.B.C. Board was a "popularity" contest is absurd. The record is replete with evidence that Appellants' premises were not appropriate to the neighborhood.

Amici also confuse the procedure for an application for a license with that for suspension or revocation of a license and would have the revocation procedure applied to the proceedings for re-issuance of a license. Separate and distinct standards for each type of proceeding are set out in the Act and the A.B.C. Board regulations. It would undoubtedly be reversible error for the Board to confuse the two.

Amici infer that the enforcement of the Alcoholic Beverage Control Act by the Board will lead to wholesale economic injury to alcoholic beverage retailers and restaurants in the District of Columbia through loss of credit, depreciation of investment and failure of leases and rental agreements. This assertion is absurd. The vast majority of licensees are conscientious businessmen whose establishments are assets to the

community. Of 2,225 applications before the A.B.C. Board during the 1966 fiscal year, only 39 were protested of which 14 were denied by the Board.⁴ An Applicant need approach the Board with trepidation only if he is clearly outside the intent of the A.B.C. Act or has adopted a "public be damned" attitude during his previous year of operation.

CONCLUSION

The arguments of the *Amici Curiae* are without substance and it is respectfully submitted that the judgment of the District Court should be affirmed.

Respectfully submitted,

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⁴ 1966 Annual Report, District of Columbia Alcoholic Beverage Control Board.

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REPLY BRIEF FOR APPELLEES SIMONSON, TYSON,
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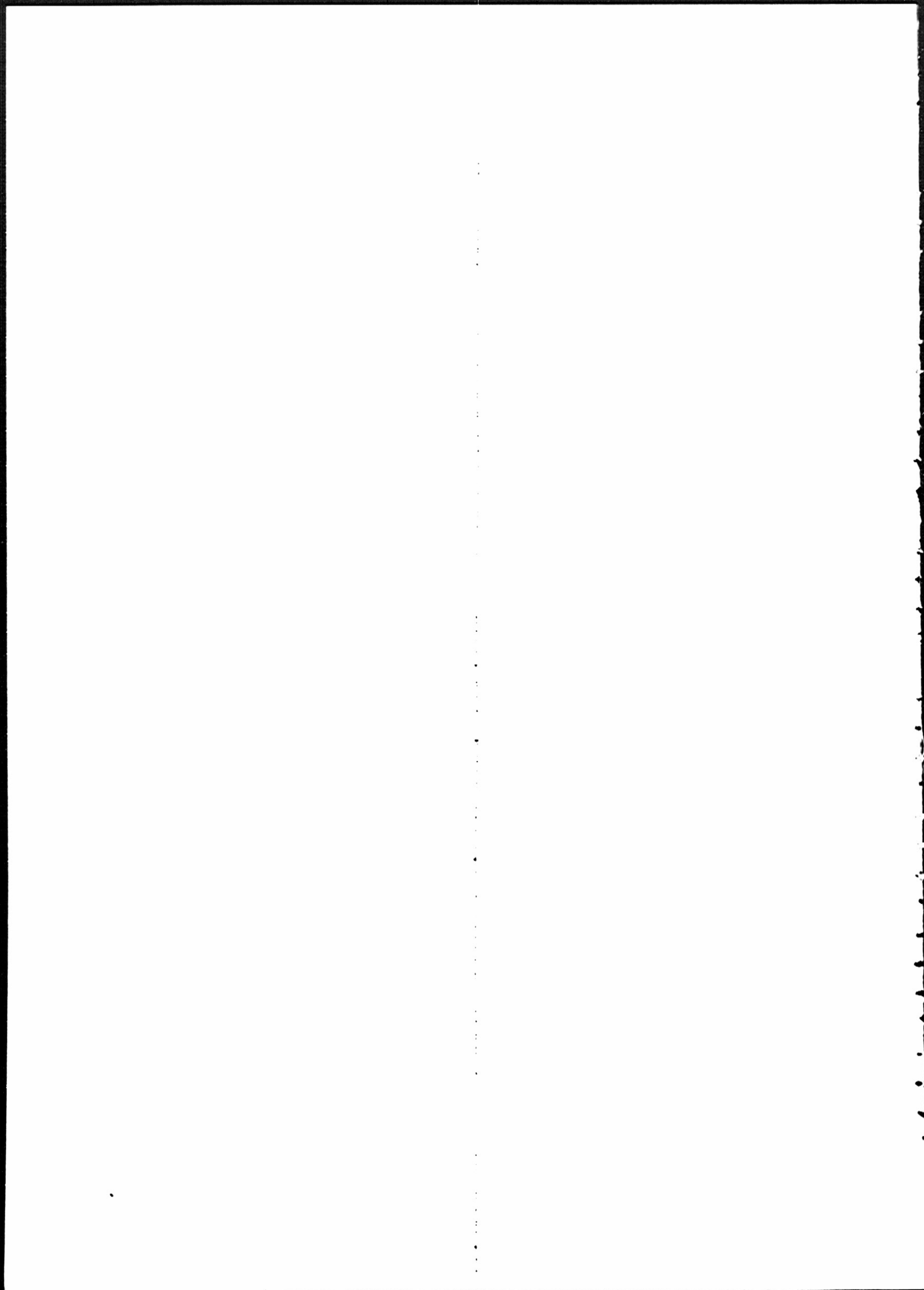
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AND WYCKOFF TO BRIEF OF AMICUS CURIAE

I

The Board gave due consideration to appellants'
equities.

In the summary of the first argument of the amicus curiae, it is stated that "A fair reading of the Alcoholic Beverage Control Act conclusively demonstrates that an original applicant and a renewing applicant do not stand in identical positions."

Unquestionably, as the amicus curiae so painstakingly points

out, the Act, and the Regulations promulgated pursuant thereto, make various procedural distinctions between the processing of an original application and the processing of a "renewal" application. As to matters of substance, the Board has never taken the position that it may arbitrarily refuse to either issue or "renew" a license, or that the determination of whether a license should issue or be "renewed" can properly be based upon the mere whim of the residents of the neighborhood or the popularity of the applicant. Statements and inferences of the amicus curiae to the contrary are not supported by the records in these cases, or by any other records, and are grossly misleading and wholly without substance.

The amicus curiae states that the Board completely ignored the equities of the appellants. In making this statement, the amicus curiae has either failed to read and comprehend the administrative records and the findings of the Board based upon those records, or is attempting to divert the attention of the Court from the main issue involved in the cases. A reading of the Board's findings will reveal that it was aware of appellants' equities and gave due consideration to them. In the findings in the Roundtable case, for example, the Board specifically stated that it " * * * is certainly mindful of the equities on both sides as it weighs the testimony and evidence" (J.A. 309; and see page 44 of the Board's brief). In view of such findings,

it cannot be seriously contended that the Board treated the appellants' applications as though the appellants were appearing before the Board for the first time.

II

The absence of wrongdoing on the part of a licensee does not, of itself, automatically entitle him to a re-issuance of his alcoholic beverage license.

The real substance of the complaint of the amicus curiae appears to be that the Board complied with the statutory provision requiring it to consider the appropriateness of appellants' establishments for the respective neighborhoods. The amicus curiae argues, without the benefit of any authority, that once a license to dispense alcoholic beverages is issued, the Board, absent some violation of law on the part of the licensee, must re-issue the license each succeeding year. This is contrary to the prevailing view. In 2 ALR 2d 1239, 1242, it is stated:

"It is well settled that licenses issued for the sale of intoxicating liquors or beverages have no qualities of a contract or of property, but are merely temporary permits to do what otherwise would be an offense against the law--that such a license is a mere privilege to carry on a business subject to the will of the grantor, and is not a contract between the licensee and the government, or property or a vested right.

"Hence, in the absence of statutory provisions to the contrary, as a general proposition, the position of an applicant for the grant or renewal of a liquor license is not improved by the fact that he had been granted such a license in the past." [Footnotes omitted.]

But even more important and more to the point than the foregoing is the provision of our statute which provides that, before an alcoholic beverage license may issue, the Board shall satisfy itself:

"That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired." (Section 25-115(a)5, D.C. Code, 1961.)

The above statutory provision makes it mandatory upon the Board to consider the appropriateness of the establishment for the neighborhood, and this requirement is as equally applicable to a "renewal" as it is to an "original" application. (See authorities set forth on pages 41 and 42 of the Board's brief.)

Under the thesis advanced by the appellants and the amicus curiae, however, it would not be possible for the Board to comply with this section. Instead of the Board satisfying itself that the establishment is appropriate for the neighborhood, as the statute

requires, the Board would merely have to satisfy itself that the establishment, whether it be presently appropriate or inappropriate for the neighborhood, had been operated during the previous year within the letter of the law. The distinction is apparent, and is graphically illustrated by the history of appellant Kaycee, Inc. Kaycee, Inc., formerly operated a bona fide restaurant serving Arabian food. On June 16, 1965, the whole operation, including the name, was changed. Now, instead of operating a bona fide restaurant for the service of Arabian food, Kaycee, Inc., operates a rock and roll establishment. Whereas the former operation was appropriate for the neighborhood, the latter operation, according to the evidence, is not. Yet, under the theory advanced by appellants and the amicus curiae, since the owners of Kaycee, Inc., were operating within the law, the Board was required, as a matter of law, to re-issue a license to the corporation.

III

In determining whether an alcoholic beverage license should be re-issued, the Board is not bound by the same considerations involved in a revocation proceeding.

In advancing the third argument, the amicus curiae again has failed to grasp the intent and meaning of Section 115(a) 5, supra. One of the very purposes of the "renewal" proceeding is to determine

whether an operation, which may otherwise be lawful, is appropriate for the neighborhood. The purpose of a revocation proceeding, however, is to determine whether the license of an establishment which has been found to be appropriate for the neighborhood should be suspended or revoked because of some violation of the law. In the revocation proceeding, the charges are served upon the licensee, who is required to come before the Board and answer. In the "renewal" proceeding, however, no charges are necessary, because the statute specifically places the applicant on notice that he must show, among other things, that his premises are appropriate for the neighborhood.

CONCLUSION

It is respectfully submitted that the arguments of the amicus curiae, which are but an elaboration of those advanced by the appellants, are without merit, and that the judgments of the court below should, therefore, be affirmed.

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BRIEF FOR RESTAURANT BEVERAGE ASSOCIATION OF WASHINGTON, D. C.,
INC., AND WASHINGTON D. C. RETAIL LIQUOR DEALERS ASSOCIATION

AMICI CURIAE

293
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,194

KAYCEE, INC. and SEABRIGHT, INC., Appellants.

v.

JOY R. SIMONSON, et al., Appellees.

No. 20,196

CARBER, INC., Appellant,

v.

JOY R. SIMONSON, et al., Appellees.

Appeal From The United States District Court
For The District Of Columbia

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Washington, D. C.

United States Court of Appeals
for the District of Columbia Circuit

FILED OCT 10 1966

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Amici Curiae

QUESTIONS PRESENTED

I

Whether under the Alcoholic Beverage Control Act the standards applied to an original applicant for a liquor license may be applied by the Alcoholic Beverage Control Board to an application for renewal of an existing liquor license, when the holder thereof has made substantial investments and commitments based on his prior holding thereof. Further, whether the Board, without notice, was justified in departing from its long-standing practice of considering an application for renewal on a different basis than an original application.

II

Whether the Alcoholic Beverage Control Board denies fundamental due process by failing to require a reasonable quantum of proof of wrongdoing or violation of law in denying applications for renewal of liquor licenses.

III

Whether in denying the renewal of a liquor license the Alcoholic Beverage Control Board should not be held to standards at least similar to those required for revocation of a liquor license, where in both cases the holder of a license has a substantial investment based thereon in stock, fixtures and real estate commitments.

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UNITED STATES COURT OF APPEALS
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KAYCEE, INC. and SEABRIGHT, INC., Appellants,

v.

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CARBER, INC., Appellant,

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JOY R. SIMONSON, et al., Appellees.

Appeal From The United States District Court
For The District Of Columbia

BRIEF FOR AMICI CURIAE

I

Statement Of The Case

The appellants, Kaycee, Inc., Seabright, Inc., and Carber, Inc., are District of Columbia corporations, each of which operates a restaurant within the District of Columbia and each of which operates with a Retailer's License, Class C, for the on-premises sale and consumption of alcoholic beverages. (J. A. 86, 93, 304)

In November, 1965, the appellants, Kaycee, Inc., and Seabright, Inc., applied for renewal of their previously-existing licenses (J. A. 5) and, in January 1966, appellant, Carber, Inc., did the same. (J. A. 217)

After notice, a protest and a hearing thereon, the Alcoholic Beverage Control Board, by a majority, refused to renew the appellants' licenses. (J. A. 91, 98, 312)

A review of the reasons for refusal indicates that the renewal of their licenses was refused because the place for which the license was to be issued was inappropriate considering the wishes of people residing or owning property in the neighborhood. (J. A. 91, 98, 312) The license for Carber, Inc., was refused on a further ground which is immaterial to the purposes of this brief. (J. A. 312) In all three decisions the Alcoholic Beverage Control Board stressed the identical nature of original and renewal applications. (J. A. 90, 97, 309)

The appellants filed actions in the United States District Court for the District of Columbia, each seeking a temporary restraining order, a preliminary injunction and a permanent injunction to compel issuance of the licenses by the Board. (J. A. 4-14, 33-35, 216-227) The appellees filed a motion for summary judgment (J. A. 38), which was granted by the District Court. (J. A. 117) In the case of each applicant the District Court granted an injunction, pending the outcome in this Court of the above-entitled causes. (J. A. 117, 118)

By motion filed August 12, 1966, the Restaurant Beverage Association of Washington, D. C., Inc., and the Washington D. C., Retail Liquor Dealers Association sought leave to file this brief as amici curiae and to participate in oral argument. By order dated September 20, 1966, this Court allowed the filing of this brief as amici curiae, while denying the right to participate in oral argument without prejudice.

II

Statement Of Interest Of Amici Curiae

The Restaurant Beverage Association of Washington, D. C., Inc. (hereinafter call "RBA"), and the Washington D. C., Retail Liquor Dealers Association (hereinafter called "LDA") have demonstrably vital interests in endeavoring to aid the Court in reaching a correct understanding of and decision upon the questions presented in this appeal.

The RBA is an organization composed of approximately 250 member restaurants, all licensed in and by the District of Columbia, for the on-premises sale and consumption of food and alcoholic beverages. The RBA represents a true cross-section of the various types of restaurant operations being conducted within the District of Columbia.

The LDA is an organization comprising in its membership approximately 320 of the 388 retail stores, licensed by and in the District of Columbia, and holding Retail Licenses, Class A, for the off-premises sale of alcoholic beverages. The LDA, reflecting in its membership 84% of the retail stores, speaks with representative authority on matters affecting Class A licensees in the District of Columbia.

Both the RBA and the LDA have a deep interest in policies relating to the regulation, issuance and revocation of liquor licenses within the District of Columbia. It should be noted that while the RBA is concerned primarily with Class C licenses, and the LDA is concerned primarily with Class A licenses, the issues presented on this appeal have relevance to both types of licenses.

III

Summary Of Argument

A.

A fair reading of the Alcoholic Beverage Control Act conclusively demonstrates that an original applicant and a renewing applicant do not stand in identical positions. It is clear from the Act, and, indeed, it has been the long-standing practice of the Board which administers the Act, to acknowledge that different considerations must be applied to a renewal application. This is due to the fact that long-range commitments and substantial financial investments have been made based upon the license. To view original applications and existing licenses as identical is to cast the entire business community into an intolerable position of uncertainty.

B.

The Alcoholic Beverage Control Board does not have unlimited discretion in the regulation of licenses. The Board denies fundamental due process by failure to require a reasonable quantum of proof of wrongdoing or violation of law in denying applications for renewal of liquor licenses.

C.

The Alcoholic Beverage Control Act provides definitive standards for revoking an existing license. The failure to renew a license places the licensee in the same position. It is unthinkable that the applicant for a renewal of his license, who must necessarily have a substantial investment in stock, fixtures and real estate commitments, should not be protected by standards at least similar to those required for revocation.

IV

Argument

A.

A fair reading of the applicable portions of the Alcoholic Beverage Control Act, and a reasonable interpretation thereof, demands the conclusion that an existing licensee is entitled, upon application for renewal of its license, to more consideration than an original applicant; and, historically, such a licensee has been granted more consideration by the Alcoholic Beverage Control Board.

The Alcoholic Beverage Control Act (25 D.C. Code 1961 Edition §101 et seq.) supports the proposition that an application for renewal of a license is entitled to more consideration than an original application for a license. Since its inception in 1934, the Board has recognized this distinction and has followed the same. It has been a common assumption in the business community, particularly those people in, and dealing with, the restaurant and liquor business, that an existing licensee's application was quite different from an original application. This was a perfectly valid assumption based on many different considerations, not the least of which was the policy of the Alcoholic Beverage Control Board in dealing with these two classes of applicants. In innumerable applications for renewals of licenses, the Board, in its "findings" has adverted to the property rights that have conjoined with an existing licensee's license. Typical of the many "findings"^{1/} that have employed almost identical language can be found in In re B And H Corporation, application No. 5186, dated January 29, 1959:

^{1/} Other typical "findings" are printed in Argument II of the Brief filed herein on behalf of Carber, Inc.

"Since this business has been in existence since 1957, the applicant has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."

The licensee above referred to had only been in existence for two years, and the Board acknowledged the substantial property rights that had come into existence. The obvious corollary is that where the Board is considering an original application there are, as yet, no substantial property rights to be weighed.

The Act, itself, also acknowledges differences between the two classes of applicants. In the case of original applicants, the "Board shall give notice by advertisement published once a week and for at least two weeks in some newspaper of general circulation, published in the District of Columbia [before granting a license] Such notice shall state that remonstrants are entitled to be heard before the granting of such licenses and shall name the time and place of such hearing." 25 D. C. Code 1961 Ed. § 115(b). This does not apply to a renewal of an existing license. (J. A. 253) Also in the case of original applications 25 D. C. Code 1961 Ed § 115(c) provides that ". . . no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet . . . object to the granting of such license." This does not apply to a renewal of an existing license. Furthermore, in the case of original applications the regulations issued under the Act requires a picture of the premises (J. A. 252, A. B. C. Reg. 2-122) but none is required when a renewal is

filed. (J. A. 252) Minutes of the corporate meeting are required on the original application but not under the renewal application unless there are changes within the corporation. (J. A. 252) There is a placard which is posted at the time of the original application. Likewise, there is a placard posted at the time of the renewal. However, the Alcoholic Beverage Control Board uses the word "renewal" on the placard which is used on a renewal application. (J. A. 253) At the time of the initial application the licensees are interviewed and investigated for residence and employment but this is not done on renewal. (J. A. 253) A police report is required on an original application but not required on renewal. (J. A. 253) A "route sheet" requesting other departments of the D. C. Government to see whether or not applicants have other licenses to operate restaurants and stores is required on an original application but this is not required on renewal. (J. A. 253-254) A so-called "Statement A" which gives landowners permission to have a licensee in the premises is required on an original application but not on renewal. (J. A. 254) The form for an original application is five pages long and the application for a renewal is only one. (J. A. 254) Furthermore, it should be noted that the Alcoholic Beverage Control Board in their opinions constantly use the term "renewal applications". (J. A. 255)

Rule 2.1 of the "Procedural Rules of Practice to Govern Hearings Before the Alcoholic Beverage Control Board" provides in part:

"Upon the filing of an application for the issuance of an original or the transfer to a different location of an existing license . . . the Board shall promptly delineate or define the boundary lines of the 'neighborhood' to be considered by said Board". . . (Emphasis supplied)

Rule 2.3 limits the requirements for a radius plat to original applications or location transfers. Rule 2.6:1(a) provides that written objections concerning the initial issuance or transfer of a license to a new location, shall be on forms prescribed. Rule 2.9 prescribes that the Board on an original or transfer application (no mention is made of renewal applications) must make specific findings of fact as to five considerations. The fourth and fifth specific findings deal with the requirements of 25 D. C. Code 1961 Ed. § 115(a)5 relating to the appropriateness of the place for which the license is sought, considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

The aforesaid distinctions were not written into the Act, the Regulations, and the Procedural Rules and the practice recognizing the differences between original issuance and renewal did not develop, without reason. They are based on the obvious conclusion that an existing licensee possesses, as the Board has so often said,^{2/} substantial property rights.

The practical, commercial considerations in this problem are enormous. There are many persons in the business community (obviously including the members of the RBA and the LDA) whose day-to-day transactions are guided by rather fundamental and reasonable assumptions. The most fundamental assumption is that a restaurant, long-established and lawfully operated, will have its liquor license renewed. All manner of commercial transactions are based on the foregoing. Long-term leases, deferred-payment sales contracts, conditional sales contracts, rental agreements, investments in furniture,

^{2/} See authority listed in footnote 1.

fixtures and other improvements -- all these, and more, have as a basis the renewal of its liquor license by a lawfully operated licensee.

In these cases, the Board, for the first time in 32 years, has disregarded the distinction between original and renewal applications. At page 6 of its findings upon the application of Carber, Inc., the Board made this statement (J. A. 309):

" . . . Whether or not long-standing customs of cursory review or of giving preponderant weight to the equities involved in an existing enterprise may have lulled or misled some licensees into believing otherwise does not alter this statutory obligation of the Board [to treat renewals and original applications identically]."

The Board for the first time now says that a practice followed by it and its predecessors for 32 years should not have been misconstrued as reflecting an administrative policy! The Board says to any applicant for renewal -- no matter how impeccable his conduct, no matter how long he has been in operation, no matter what long-range commitments he has made based upon the prior issuance of his license -- that his existing license terminates at the end of the year and that he is entitled to no more consideration than an applicant who has no investment or commitments and has never engaged in the restaurant business. This is gross inequity.

Original applicants should be, and by statute are, subjected to the scrutiny and consideration of their potential neighbors. Property owners should be able to exercise a reasonable degree of control over the character of their neighborhood. That is why the Act, and regulations adopted pursuant thereto, as well as the procedural rules, have prescribed the elaborate format to be followed in considering original applications. That is why the original application must be subordinated to the wishes of the

neighborhood. The relative equities are obviously balanced in favor of the residents. The applicant has ample forewarning before he enters into long-range commitments associated with a license. His commitments are conditional. However, once a license is granted, once the commercial venture is launched, different considerations must obtain. This is not to suggest that once a license has been issued, the possessor is given carte blanche to do what he pleases. It is to suggest that when the licensee abides by all the statutory standards that are within its control, he should not be constantly subjected to the whim known as "neighborhood wishes". That is not what the Act was meant to accomplish, and that is not how the Alcoholic Beverage Control Board has interpreted the Act for 32 years.

This Court has considered the "nature" of a license for the sale of alcoholic beverages in the case of Rowe v. Colpoys, 78 U.S. Appeals D. C. 75, 137 F. 2d 249 (1943). It was there said (78 U.S. App. D. C. at 77):

"But, whether it [a liquor license] is a right, the transfer of which is controllable by a court or some other authority, it is, nevertheless, a valuable right, with attributes of property and transferrable value, in the market of alcoholic beverage distribution. . . . No good reason, either of procedure or policy, has been urged, and none is apparent, for exempting this form of property right, and its tangible evidence, from the same process as that to which other property rights are subject." (Emphasis supplied)

There is, therefore, judicial support for the very policy which the present Board, and its predecessors, followed for over 32 years.

The Court had occasion to consider the renewal of a liquor license in Minkoff v. Payne, 93 U.S. App. D. C. 123 at 126, 210 F. 2d 689 at 696 (1953). There this Court said (93 U.S. App. D. C. at 126):

"We turn, then, to consideration of the evidence before the Board to determine whether, in the light of the statutory criteria for issuance of a license, the findings of the Board were properly upheld by the District Court. We have pointed out that under the statute the Board must satisfy itself that

the applicant is of good moral character and generally fit for the trust to be in him reposed, § 25-115(a)(1). A decision of the Board on this question may not be arbitrary or capricious. It must be based upon substantial evidence. Moreover, when, as in this case, the Board action amounts to a refusal to renew a license previously issued it must be based upon evidence which the applicant had full opportunity to refute." (Emphasis supplied)

The language reflects an obvious judicial recognition of the difference between an original and a renewal application. These words of the Court echo what is the view of a majority of the jurisdictions in this country. 48 C.J.S. Intoxicating Liquors, § 154, states that view as follows:

"Renewal of a license. In passing on an application for a liquor license, the authorities should distinguish between an application for a new license and one for a renewal of a license. While the renewal of a license or permit has been held within the discretion of the licensing authorities, such discretionary power cannot be used arbitrarily."

In Charles D. Kaier Co. v. Doran, 42 F. 2d 923 (D.C. E.D. Pa. 1930) which dealt with the refusal to renew the license of a licensee of long-standing, the Court said at p. 924:

"In the case of an original permit, due weight should be given to the judgment of the administrator who should not be required to assume responsibility for the conduct of a permittee to whom the administrator thinks a permit should not be entrusted. After, however, property rights have grown up under a granted permit, it cannot be revoked without proof of justifying facts, and no just administrator will refuse to renew it without a justifying reason for the refusal. . . .

This long preamble has been indulged in to make clear that although an administrator may well ask to be convinced that an applicant is a fit person to have a permit, after one has been granted, and emphatically after it has been annually renewed for many years, a finding of unfitness must be based upon some conduct of the permittee since the former permits issued. . . . There must have been a purpose in thus giving a control over renewal permits to the administrator. This places renewals in an intermediary class between those which may be revoked and those granted on original applications. There need not be a judicial finding as in revocation cases

[a judicial finding is not required to revoke D. C. licenses], but the executive judgment of refusal must have its basis in the conduct of the permittee. In original permit cases the judgment of unfitness is prospective. Will the permittee properly conduct the business? In renewal cases, the judgment is retrospective. Has anything been done or omitted which warrants a finding of unfitness?"

The above language reflects a well-reasoned analysis of the distinctions between an original application and the renewal of an existing license. To say that an original application and a renewal of an existing license are identical is to demonstrate its absurdity. The Alcoholic Beverage Control Board has now taken that position and lightly dismisses its own administrative policy of 30 years as possibly "lull[ing] or mis[leading] some licensees" (J.A. 309). Indeed, licensees, some of whom may have their life-time savings invested in a licensed establishment, have been misled.

The Board, without warning and with dramatic suddenness has now chosen to apply a new and unannounced standard to three restaurants located in Georgetown. Whatever the reason of the Board for this new policy, it is apparent that it can strike any licensed establishment within the District of Columbia. This Court should require the Board to recognize the distinction between original and renewal applications.

B.

The Alcoholic Beverage Control Board denies fundamental due process by failing to require a reasonable quantum of proof of wrongdoing or violation of law in denying applications for renewal of liquor licenses.

This argument would seem to be self evident. However, the Alcoholic Beverage Control Board in all the cases now before this Court would not renew the licenses in question even though there was before the Board no evidence of wrongdoing on behalf of the owner of the restaurant or his agent, nor was there any evidence of a specific statutory violation. The Board held that it

had the right to refuse the reissuance on the statutory ground of the "wishes of the persons residing or owning property in the neighborhood." (J. A. 90, 98, 312)

Thus the granting or denial of a renewal turns into a popularity contest. If the owner is popular he can stay in business. If he is unpopular he is out of business. This is true even though he might have been in business for 30 years and never been charged with any violation of the ABC Act or regulations. Such a ruling deprives a restaurant owner, or an owner of a liquor store, of not only his livelihood but also of his savings, for the restaurant or liquor store is useless without a license. Money that was borrowed to invest in the business is lost; the payments on the lease cannot be made and bankruptcy is the logical result.

To subject an existing license, which has the attributes of property, to a popularity contest is obviously unfair.

It has been specifically recognized that the "customary constitutional safeguards" surround those who deal in liquor, or for that matter those who seek to deal in it. Hornsby v. Allen, 326 F. 2d 605, 609 (5th Cir. 1964) rehearing denied 330 F. 2d 55 (1964).

In the Hornsby case the plaintiff was an unsuccessful applicant for a license to operate a retail liquor store. In her complaint she alleged that although she met all the requirements and qualifications, her application was denied without a reason therefor. This action was characterized in the complaint as in contravention of the due process and equal protection clauses of the 14th Amendment. In deciding that due process was an appropriate argument, the Court said (326 F. 2d at 608):

"Since licensing consists in the determination of factual issues and the application of legal criteria to them--a judicial act--the fundamental requirements of due process are applicable to it."

The Court continued at page 609:

"It is firmly established, of course, that the state has the right to regulate or prohibit traffic in intoxicating liquor in the valid exercise of its police power . . . but this is something quite different from a right to act arbitrarily and capriciously. Merely calling a liquor license a privilege does not free the municipal authorities from the due process requirements in licensing and allow them to exercise an uncontrolled discretion."

Due process in administrative proceedings of a judicial nature has been said generally to be conformity to fair practices of Anglo-Saxon jurisprudence. Hornsby v. Allen, supra. There is nothing fair in permitting the Alcoholic Beverage Control Board to refuse to renew a Class C liquor license on the ground that the neighbors are at that time opposed.

This has been recognized in Charles D. Kaier Co., Inc. v. Doran, supra at 924:

"The fact, as here, that a brewery has held a permit for many successive years is not only a fact but one of much significance. None the less no faithful administrator can renew a permit which should not be in existence, and should not be forced by the Courts to renew it. In the case of an original permit, due weight should be given to the judgment of the administrator who should not be required to assume responsibility for the conduct of a permittee to whom the administrator thinks a permit should not be entrusted. After, however, property rights have grown up under a granted permit, it cannot be revoked without proof of justifying facts, and no just administrator will refuse to renew it without a justifying reason for the refusal. . . . Any fair-minded administrator should see that the value of an investment should not be destroyed unless the conduct of the permittee warrants its forfeiture." (Emphasis supplied)

Likewise in Pennsylvania Distillery Co. v. Pennsylvania Alcohol Permit Board, 20 Pa. D&C 385 (1933) the Court held that where a permit is issued and the licensee, upon the strength of that permit, invests large sums of

money in plant and equipment, it would be almost intolerable to permit the licensing authorities to refuse subsequent permits unless evidence showed the licensee's actions were reprehensible.

It is thus submitted that the Board should not be permitted to refuse to reissue a license solely upon the ground of the wishes of persons residing or owning property in the neighborhood. Proof of some wrongdoing or statutory violation should be required before a restaurant, or a liquor store, is deprived of the ability to conduct its business.

C.

In the renewal of a liquor license the ABC Board should be held to standards at least similar to those required for revocation of a liquor license.

It is unthinkable that the Board can deprive a man of a license and his livelihood without being required to apply any objective standard. The statute prescribes objective standards for revocation of a license. Can any less be required for refusing to renew when the result is the same to the owner of the store or restaurant?

Once a liquor license has been granted, the holder is clothed with a property right^{3/} or at least with a valuable right with attributes of property.^{4/} After the license is issued, whether it be for a restaurant or a liquor store, leases are signed, and substantial money is invested.

In order to revoke a license or to suspend a license for a period of time, it is necessary to show a violation of the statute or regulations promulgated thereunder. (25 D. C. Code, 1961 Ed. § 118) However, prior to the

^{3/} Charles D. Kaier Co. v. Doran, supra.

^{4/} Rowe v. Colpoys, supra.

suspension or revocation there must be a hearing preceded by notice by certified mail (ABC Reg. 2-118(a)) and the licensee has the right to appear by himself or with counsel and to offer evidence before the Board concerning the "charges" against him. (ABC Reg. 2-118(a)) If the licensee loses at this level he has the right to appeal to the Commissioners (ABC Board Reg. 2-118(b)).

The Alcoholic Beverage Control Board did not use any such procedure or standards in the instant case. The sum and substance of what occurred was that a "hearing" was held to determine the "popularity" of the restaurant among persons residing or owning property in the neighborhood. A hearing to determine popularity with persons in the neighborhood is no hearing. There should be ascertainable standards in the case of renewal just as there are for revocation.

If any of the restaurants have violated any of the provisions of the Act or the regulations, a hearing should be held as set forth in the Code and the regulations promulgated pursuant thereto.

It is well established that an applicant for a license has the right to be treated in the same manner as prior successful applicants, Hornsby v. Allen, supra, at page 610. In that connection counsel for the appellant Carber, Inc., attempted to prove to the Court and made a proffer of testimony that in the entire history of the ABC Act -- some 32 years -- that the renewal of only two licenses has ever been denied. One of these was by way of a rule to show cause. Specific notice of the offenses of which the Board felt the applicant was guilty was given. The other resulted in the case of Minkoff v. Payne in this Court. Neither resulted in chargeless hearings such as was conducted in the cases before this Court. (J. A. 254)

The Board must have a basis--a public standard--not unbridled discretion to decide not to renew a license. This Court recognized the principle when in Pollack v. Simonson, 121 U.S. App. D. C. 362 at 364, 350 F. 2d 740 (1965), it said (at p. 742):

"Thus the statutory purpose -- that specific public standards, not unbridled discretion, should control the Board's consideration of license applications -- is jeopardized unless the Board gives each applicant some opportunity to show that his application should be favored."

CONCLUSION

In the light of the foregoing it is submitted that the trial court erred in granting the motion for summary judgment and this Court should direct the trial court to grant judgment in favor of the appellents.

Respectfully submitted,

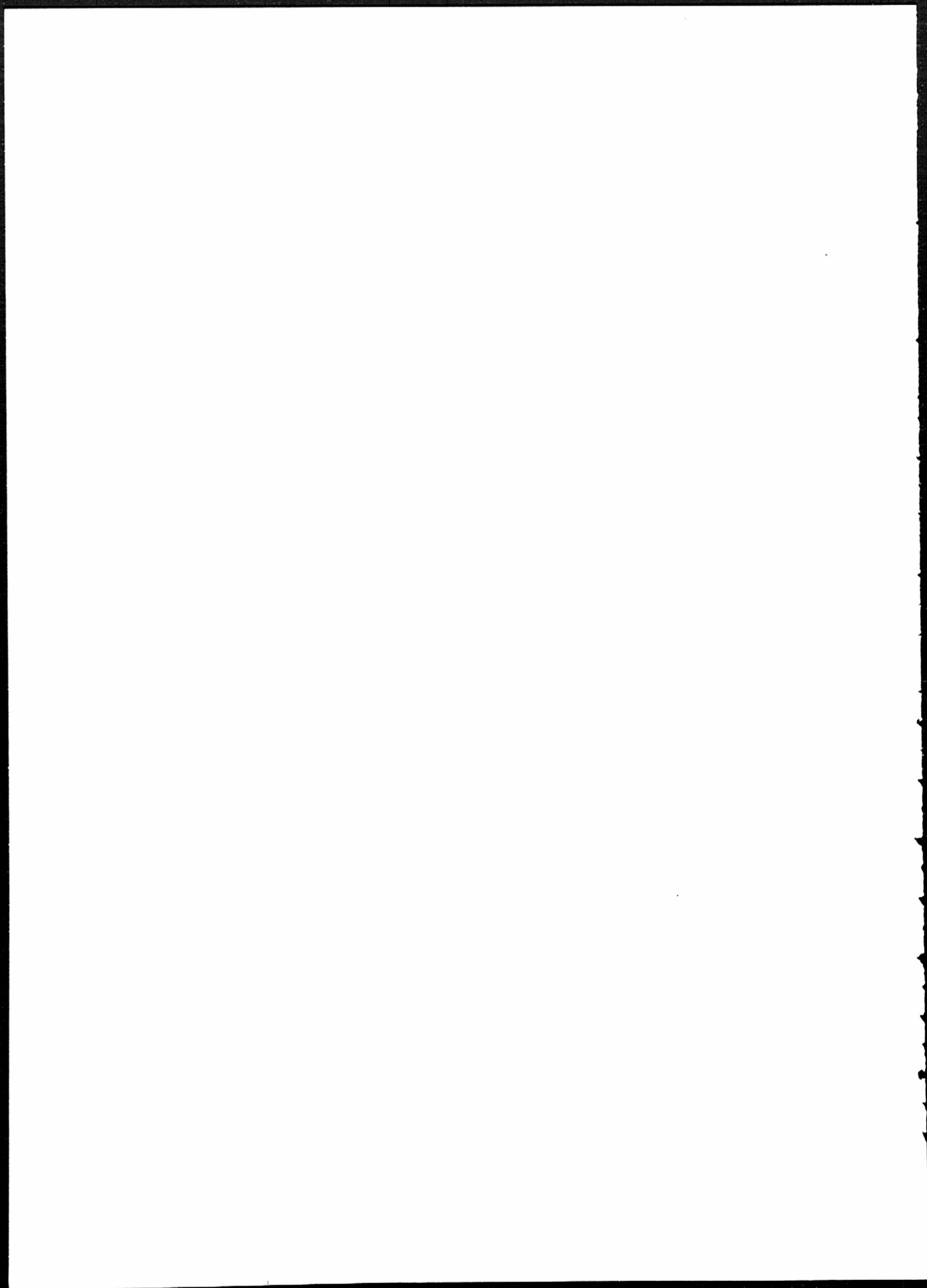
KING AND NORDLINGER

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Attorneys for Amici Curiae



FILED DEC 9 1966

UNITED STATES COURT OF APPEALS
For The District Of Columbia Circuit

Nathan J. Paulson
CLERK

No. 20,194

KAYCEE, INC. and SEABRIGHT, INC., Appellants,

v.

JOY R. SIMONSON, et al., Appellees.

No. 20,196

CARBER, INC., Appellant,

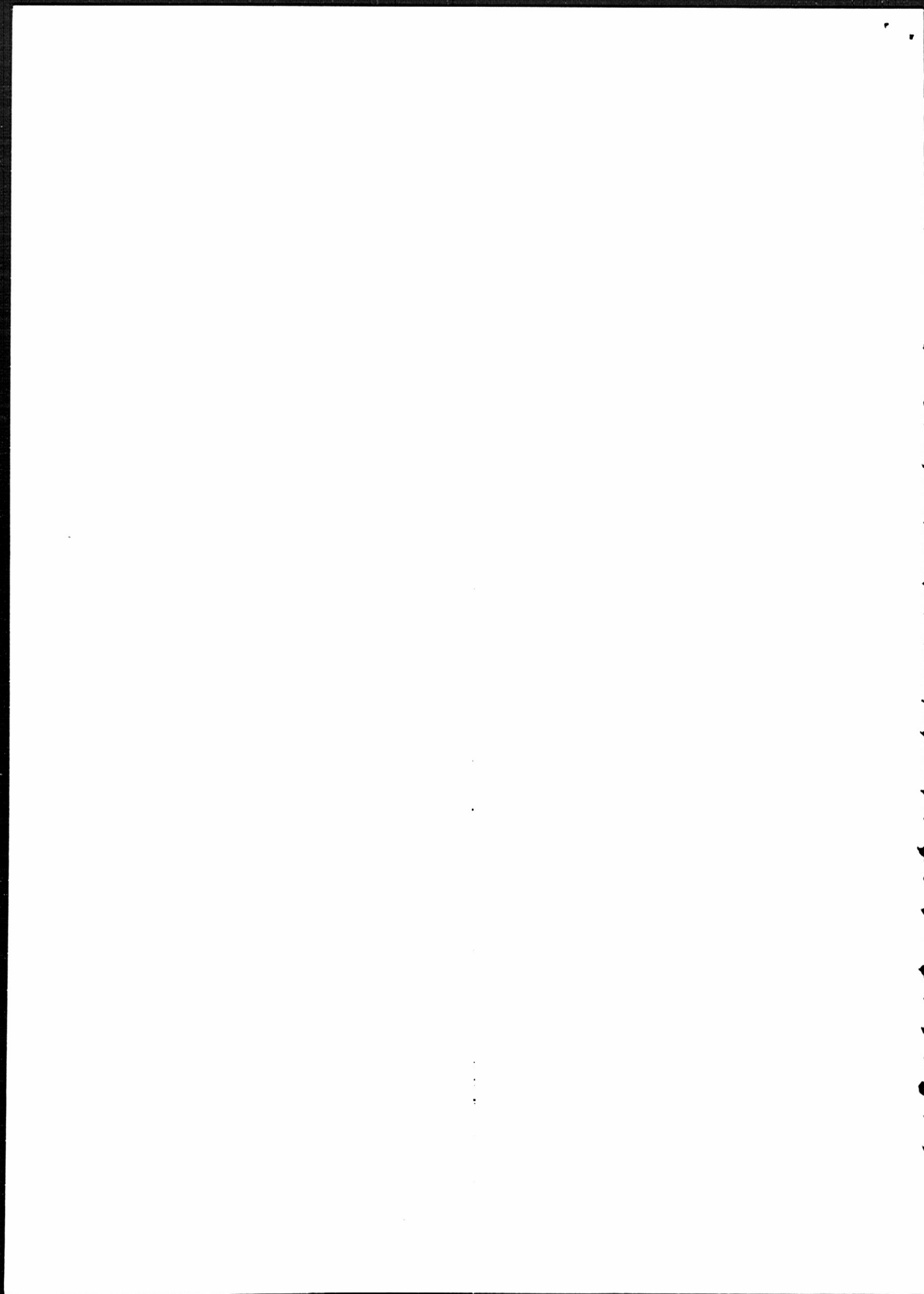
v.

JOY R. SIMONSON, et al., Appellees.

OPPOSITION OF APPELLEES TO
"PETITION FOR REHEARING
AND/OR REHEARING EN BANC"

On the grounds and for the reasons set forth below, appellees oppose the "Petition for Rehearing and/or Rehearing En Banc".

Everything that appellants rely upon in support of their petition for rehearing was extensively briefed, strenuously urged during oral argument, and fully and correctly disposed of by the Court. Appellants have advanced no new arguments and have cited no new authority, but merely reiterate, in summary form, those points which were carefully



developed in their briefs and at oral argument. Consequently, a rehearing before the same panel would serve no useful purpose.

As to a rehearing en banc, this Court said, in the case of Earl v. United States of America, No. 19,316, decided August 16, 1966, that:

"En banc courts are the exception -- not the rule -- and should be convened 'only when extraordinary circumstances call for authoritative consideration and decision by those charged with the administration and development of the law of the circuit.' "

Appellants have set forth no extraordinary circumstances which would warrant a review by the entire Court. On page 6 of their petition, they set forth the two issues that they presently press as being (1) whether Mr. Wyckoff, a member of the Alcoholic Beverage Control Board, hereinafter called the Board, should have disqualified himself or have been disqualified from participating in the proceedings, and (2) whether the Board ignored appellants' equities. It is immediately apparent that each of these issues is peculiar to the facts of these particular cases.

Although appellees deem it unnecessary to restate that which is stated in detail in their briefs, they wish to point out that, contrary to appellants' assertions, the record does not support their state-

ment that Mr. Wyckoff, while a member of the Executive Committee of the Citizens Association of Georgetown, voted to oppose any new applications for liquor licenses in Georgetown. As a committee member, he merely voted to give the President of the Association the authority, until the regular fall meeting of the Association, to oppose, in the discretion of the President, licenses for new establishments. Appellants fail to point out that Mr. Wyckoff, while a member of the Board, voted, along with the other members of the Board, to reissue licenses for establishments located closer to his home than any of appellants' establishments. The cases of In Re Murchison et al., 349 U. S. 133 (1955), and Amos Treat & Co., Inc., et al. v. Securities and Exchange Commission et al., 113 U. S. App. D. C. 100, 306 F. 2d 260 (1962), are relied upon heavily by appellants. But as one of the judges of this Court so clearly pointed out during the course of oral argument, the facts of these cases bear no resemblance whatever to the facts of appellants' cases.

As to the equities question, appellants' assertion that the Board ignored their equities is contrary to the express findings of the Board that they considered all the equities. In this regard, it is significant that appellant Carber, Inc. (Roundtable Restaurant) fails to mention that whatever "equities" it may have were obtained

as a result of outright misrepresentations made to the Board, under oath, at the time it was first licensed.

Appellants have received a full and complete due process hearing before the Board, which determined that they should not be re-licensed. The District Court, although not required to do so (Securities and Exchange Commission v. R. A. Holman & Company, Inc., 116 U. S. App. D. C. 279, 282, 323 F. 2d 284, 287 (D. C. Cir., 1963)), permitted appellants to take, in open court, the depositions of Mr. Wyckoff and the President of the Citizens Association of Georgetown, and to introduce further evidence to support their claim that Mr. Wyckoff should have disqualified himself or have been disqualified. At the conclusion of the hearing, the District Court expressly found that Mr. Wyckoff was not disqualified from participating, and rejected the other contentions of appellants as well. A panel of this Court, upon a full consideration of the cases, including consideration of a brief filed by two representatives of the liquor industry as amici curiae, rejected appellants' arguments.

Appellants have been in business throughout the entire period by virtue of a stay which was granted without objection being registered by the Board. Since appellants have been afforded every consideration which they reasonably can expect, and since the judicial process must

be concluded at some point, it is respectfully requested that the judgments should be finalized without further delay.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposition of Appellees to "Petition for Rehearing and/or Rehearing En Banc" was mailed, postage prepaid, this 9th day of December 1966, to the following:

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BRIEF FOR APPELLANT

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,196

440

CARBER, INC.,

Appellant,

v.

JOY R. SIMONSON, *et al.*,
Individually and Comprising
the Membership of the Alcoholic
Beverage Control Board
and

MR. AND MRS. GARDNER E. PALMER, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

J. E. BINDEMAN

LEONARD W. BURKA

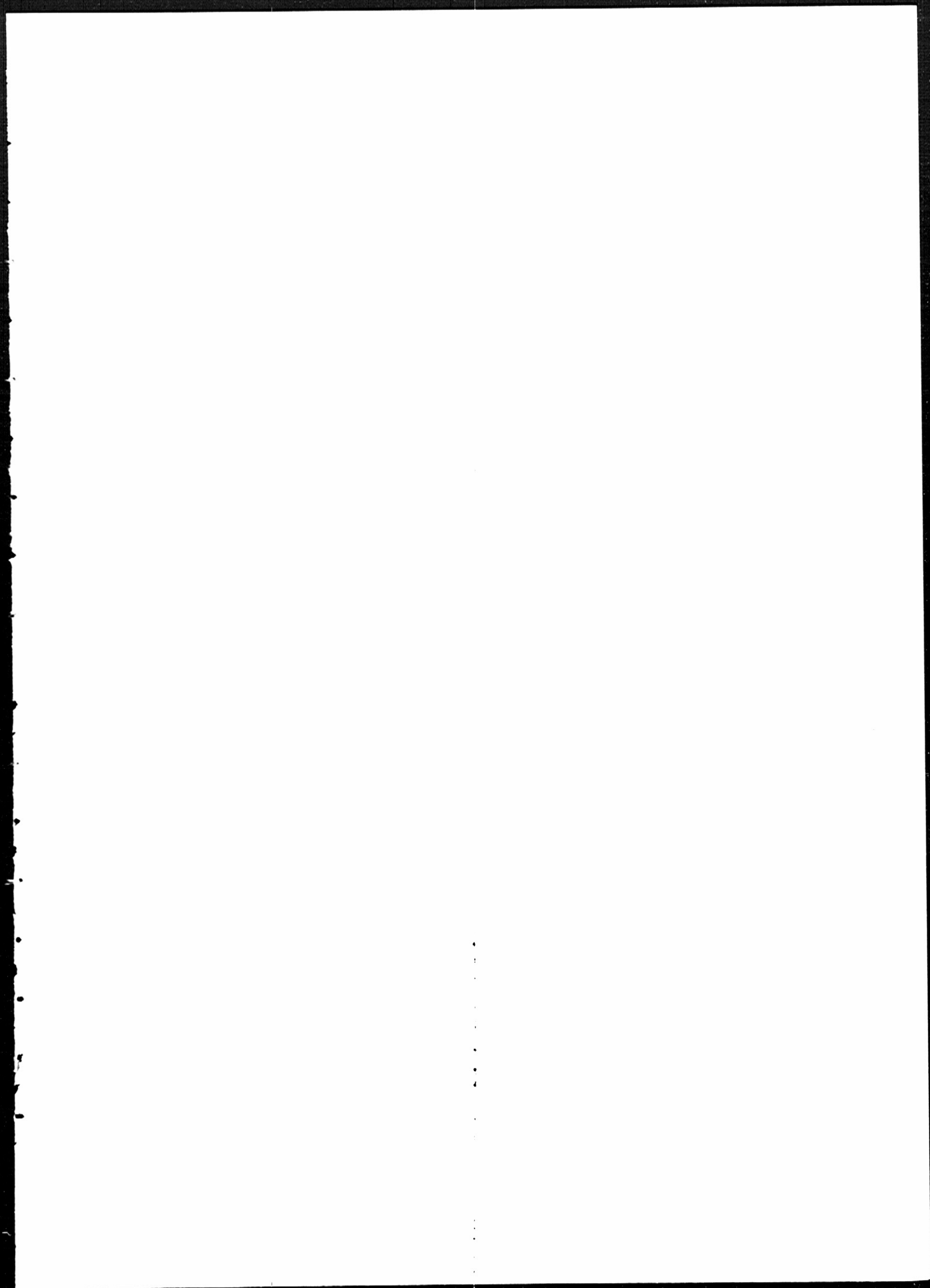
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for the District of Columbia Circuit

FILED OCT 3 1966

Nathan J. Paulson
CLERK



QUESTIONS PRESENTED

1. Was appellant denied a fair hearing before the Alcoholic Beverage Control Board (hereinafter referred to as the "Board") where the Board refused to disqualify the Honorable J. Bernard Wyckoff from sitting in this case and where the undisputed facts are as follows?

(a) The Citizens Association of Georgetown was the motivating factor and guiding force in urging denial of various liquor licenses on M Street, including the liquor license of the appellant.

(b) The Honorable J. Bernard Wyckoff, member of the Board, had been an active member of such Association for many years and was a member of such Association at the date of the hearing. Up until his appointment to such Board on August 20, 1964, he had served as Secretary of the Association and as member and Secretary of its Executive Committee.

(c) As member of such Executive Committee, he had voted at a meeting thereon on July 2, 1965, to support opposition to all new liquor applications on M Street. (Mr. Wyckoff joined in the majority opinion of the Board that a renewal application of the applicant was "new" application.)

(d) Immediately prior to the hearing the Citizens Association of Georgetown sent ex parte communications to Mr. Wyckoff characterizing appellant's place of business in most derogatory terms and stating that if appellant's license were issued by the Board it would result in a decline of real estate values in Georgetown and adversely affect Georgetown real estate and the entire Georgetown area. The said Mr. Wyckoff was for many years and at the date of the hearing a resident and property owner in the Georgetown area.

(ii)

2. Did the Board err in applying the same standards and considering the application of appellant for a renewal of its Class "C" license on the same basis as an original application and thus ignored the substantial equities of the appellant, particularly where the Act distinguishes between "original" applications and "renewal" applications, and where the Board itself has made such distinctions since its inception, over 30 years ago, namely, 1934?

3. Did the Board err in considering the moral character of appellant's officers through the instrument of a protest hearing without first giving them notice that such would be an issue, and, contrary to its prior practice of raising any such issue by rule to show cause or by citation, particularly where (a) the record shows that the said restaurant had been conducted in full accordance with the ABC laws and regulations without any objection by the Board; (b) a previous renewal license had been issued by the Board; and (c) there was no substantial evidence to support the finding of lack of moral qualifications?

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,196

CARBER, INC.,

Appellant,

v.

JOY R. SIMONSON, *et al.*,
Individually and Comprising
the Membership of the Alcoholic
Beverage Control Board
and

MR. AND MRS. GARDNER E. PALMER, *et al.*,

Appellees.

Appeal from the United States District Court
for the District of Columbia

BRIEF FOR APPELLANT

JURISDICTIONAL STATEMENT

This is an appeal from a judgment of the United States District Court for the District of Columbia granting defendants' motion for summary judgment and dismissing plaintiffs' motion for preliminary injunction and plaintiffs' complaint for permanent injunction. Jurisdiction is based on 28 United States Code 1291.

STATEMENT OF THE CASE

Appellant, Carber, Inc., is the owner and operator of a certain restaurant business at 2813 M Street, Northwest, in the District of Columbia, known as the "Roundtable Restaurant." It is hereinafter sometimes referred to as "Roundtable."

Appellees, Joy R. Simonson, James Tyson and J. Bernard Wyckoff, are the individual members of the Alcoholic Beverage Control Board of the District of Columbia. They are hereinafter sometimes referred to as the "Board."

Mr. and Mrs. Gardner E. Palmer, Misses Mary and Dorothy L. McGrade, Mr. and Mrs. Kermit S. Murphy, Mr. and Mrs. R. Michael Duncan, Mrs. Cleveland McCauley, Mr. Leigh M. Miller, Miss Mary E. McDonald, Mr. and Mrs. Tetson J. Meyers, and Mr. Arthur C. Moore are residents of the District of Columbia and are intervenors in this action.

On June 1, 1964, appellant was issued by the Board a Retailer's Class "C" Alcoholic Beverage License. Pursuant thereto, appellant entered into various contracts, including a lease for five years, incurring obligations of approximately \$100,000.00. (J.A. 305). Because of the time involved in making certain improvements, the license was not actually issued until November 25, 1964. Since that time, appellant has maintained its restaurant at said premises. (J.A. 305).

A Class "C" Alcoholic Beverage License is issued each year for the period February 1 through January 31. (J.A. 250). Accordingly, appellant applied for the renewal of its said alcoholic beverage license in January 1965. This first renewal application was not opposed by anyone and the new license, for the license year February 1, 1965 through January 31, 1966, was approved by the Board on January 18, 1965, effective February 1, 1965. (J.A. 312).

Since February 1, 1965, appellant had operated its restaurant without any criticism or complaint from the Board, although its inspectors made regular inspections. (J.A. 313). No complaint had been filed against said licensee nor was said licensee cited by the Board for any violation of the A.B.C. Act or the Regulations promulgated thereunder. (J.A. 313).

In January 1966, appellant applied for a second renewal of its said alcoholic beverage license. Same was protested by certain individuals and hearing was held January 25, 1966, on the application before the Board. (J.A. 304).

Early in 1965, the Citizens Association of Georgetown (hereinafter referred to as the "Association"), an association having jurisdiction over the area in which appellant conducts its restaurant business, announced its intention to protest the renewal of appellant's license and other licensees on M Street, Northwest. Said Association sponsored, carried on and fomented a campaign in opposition to renewal of the licenses. (J.A. 142, 318). The Association urged its members to report to the Police Department any trespassing, vandalism, disorderly conduct and illegal parking of which they were aware without indicating whether appellant or other licensees were responsible therefor. The Association further urged its members to appear before the Board and actively protest the renewal applications filed by such licensees. (J.A. 142, 321).

Although the Association did not enter its formal protest to appellant's renewal application, it urged and supported individual Georgetown residents in their opposition to such application. (J.A. 142, 316-323). In this manner the Association became the complaining witness and spear-headed the opposition against appellant.

The Association communicated with various officials of the Police Department of the District of Columbia, urging opposition to said renewals. (J.A. 318). The Association further published and disseminated to its members certain news publications, identifying appellant's restaurant in extreme and inflammatory language, as follows:

(a) Newsletter of the Citizens Association of Georgetown, May 19, 1965:

"ABOUT M STREET TAVERNS.

"Resolutions passed at our April meeting call for (1) alcohol being served only to teenagers issued official identification cards with parents' approval; (2) curbs on liquor licenses to taverns here; (3) more police protection in the M Street area; (4) study of bill introduced in Congress by Rep. Abraham J. Multer (D-N.Y.) to raise the drinking age to 21."

(b) News Supplement on Taverns, September 19, 1965:

"Recent liquor license policies by the District of Columbia have permitted a major portion of Historic Georgetown to become a cheap honky-tonk tavern strip.

* * * * *

"A DOUBLE-EDGED TRAGEDY

"The decline of Georgetown because of excessive tavern activity in the M Street area is a double-edged tragedy:

"It is a decline for in-city family living.

"It is also a decline for an irreplaceable historic district in the heart of the Nation's Capital.

"The startling fact is that deterioration is permitted at the very moment President Johnson has called for new effort to bring beauty and quality to urban life. Most American cities would welcome restoration of decayed central districts into attractive family neighborhoods. Georgetown pioneered to become just such a neighborhood. And it did so by private citizen effort without the use of government funds.

"The United States Congress recognized Georgetown's accomplishment by passing, in 1950, Public Law 808, setting the boundaries of Old Georgetown, declaring it to be of 'historic interest,' and providing for the preservation of its architectural character.

"There are other instances in The United States where laws governing alcoholic beverages have encouraged commercial interests to develop a honky-tonk tavern 'strip across the river.' But we know of none that has caused so much damage to residential quality and historic value as the 'Georgetown strip' in the Nation's Capital."

(c) Citizens Association Newsletter, November 1965:

"CHEAP TAVERN STRIP ON M STREET

"Each week the cheap, honky-tonk tavern strip created by the District of Columbia Government in Georgetown's M Street area continues to draw thousands of undesirables, teenage drinkers and lawbreakers."

(d) Citizens Association of Georgetown Newsletter, December, 1965:

"MEMBERSHIP ACTION RE TAVERNS & LICENSES

"The membership at our monthly meeting on November 8 voted to oppose all new Class "C" (Restaurant) liquor licenses in Georgetown on the grounds, among others, that this area is saturated with licensed establishments. . . ."

Appellee J. Bernard Wyckoff, a member of the Board, has been for many years an active participating member of the Association. (J.A. 235). Prior to his appointment to the Board he knew of the Association's policy with respect to the licenses on M Street. He was elected Secretary of the Association at the Spring meeting of 1965, and served on its Executive Committee. He attended various meetings of the Executive Committee, including the meeting of July 2, 1965, wherein the Executive Committee *unanimously* resolved to oppose any new applications for liquor licenses in the Georgetown area. (J.A. 235-237, 296-297). He was appointed to the Board on August 20, 1965. (J.A. 137). On August 20, 1965, he resigned his office in the Association, but maintained his membership. (J.A. 241). He received each of the aforesaid inflammatory publications referring to appellant both before and after his

appointment to the Board and his resignation as Executive Secretary of the Association. Mr. Wyckoff owns property and resides in the Georgetown area. (J.A. 241).

Appellant filed timely motion with the Board that Mr. Wyckoff disqualify himself or be disqualified from sitting as a Board member. (J.A. 129). Such motion was overruled by the Board. (J.A. 144).

At the Board hearing, ten members of various Police Departments throughout the District of Columbia testified that they regularly visited appellant's restaurant and at no time saw any evidence of any misconduct or illegal action. Their testimony was unanimous that the restaurant was conducted in a high-grade manner, fully in accordance with law. (J.A. 146-160, 191-192).

The Captain of No. 7 Police Precinct, in which the premises are located, testified that while there had been an increase in petty crimes in the neighborhood during the immediate past year, such increase was not significant. (J.A. 192). The Captain praised appellant's restaurant and appellant's cooperation with the Police and their efforts to maintain an orderly place of business. The Captain further acknowledged that if any patron violated the law outside the restaurant, that would become a police matter and a matter for the administration of law and order by the Police Department. (J.A. 192).

Various persons residing near the premises complained of difficulties in parking, noise, and certain acts of vandalism within the immediate area. However, none of the aforesaid acts of vandalism could be prescribed to any deficiency on the part of appellant. The alleged acts included (J.A. 148, 196, 198, 201, 202, 203, 207):

- (a) Part of fence pushed in.
- (b) Wrought iron replica of a dog stolen.
- (c) Antenna snapped off.
- (d) Air in tires let out.

- (e) Christmas wreath stolen off front door.
- (f) Gear shift on car stolen.
- (g) Aerial broken off car.
- (h) Antenna bent.

Appellant's restaurant is located in a commercial area adjacent to a light manufacturing and heavy manufacturing zone. More than one-half of the neighborhood, as delineated by the Board, is in such commercial light and heavy manufacturing zone. (J.A. 144-145).

On January 29, 1966, the Board (one member dissenting) denied appellant's application for renewal of its said alcoholic beverage license. The Board issued Findings of Fact and Conclusions of Law. (J.A. 304). Thereafter, on January 31, 1966, appellant filed suit in the District Court for judicial review of the decision of the Board and for injunction. (J.A. 216). In answer to appellant's Motion for Preliminary Injunction, appellees filed Motion for Summary Judgment. (J.A. 234). On April 5, 1966, the District Court granted appellees' Motion for Summary Judgment and dismissed appellant's Motion for Preliminary Injunction. (J.A. 324). Such Court further enjoined appellee Board, pending appeal, from interfering with the continued operation of appellant's restaurant as a Retail Class "C" licensee. (J.A. 324).

On April 11, 1966, appellant filed Notice of Appeal. (J.A. 325).

STATUTES AND REGULATIONS

Title 25-101, et seq., D. C. Code, 1961

"§25-115 * * *

"(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license,

retailer's license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

"1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

* * * * *

"5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

* * * * *

"(c) Except in the case of a retailer's license class C or class D or a license issued under section 25-111(1) to be issued for a hotel or club or a retailer's license class B or class E, no place for which a license under this chapter has not been issued and in effect on the date the written objections hereinafter provided for are filed, shall be deemed appropriate if the owners of a majority of the real property within a radius of six hundred feet of the boundary lines of the lot or parcel of ground upon which is situated the place for which the license is desired, shall, on a form to be prescribed by the Commissioners filed with the Board, object to the granting of such license. In determining the sufficiency of such objections the owners of all such property not lying within a residential use district as defined in the zoning regulations and shown in the official atlases of the Zoning Commission shall be taken as consenting to the granting of such license, except that the Commissioners shall have power to file objections on behalf of any property lying within such radius owned by the United States or the District of Columbia. This subsection shall be construed as a limitation upon the discretion of the Board in granting a license and not as a limitation upon the discretion of the Board in refusing a

license: *Provided, however,* That none of the provisions of this chapter shall prevent the Board from promulgating regulations to permit the lawful bona fide owners of warehouse receipts for bonded liquors stored in Government warehouses either in the District of Columbia or elsewhere from withdrawing such bonded liquors for personal use on payment to the Collector of Taxes for the District of Columbia, taxes at such rates as provided in this chapter: *Provided,* That such bona fide holder of such warehouse receipts held legal title to such warehouse receipts prior to the passage of this chapter."

Regulation 2-103 of the Alcoholic Beverage Control Board.

"2-103. LICENSE NEAR SCHOOL, COLLEGE, UNIVERSITY, CHURCH, OR RECREATION AREA.

(a) No license, other than a retailer's license, class C or class D, issued for a bona fide club or hotel, or a retailer's license, class B, or a retailer's license, class E, or a retailer's license, class F, shall be issued for any place of business within 400 feet of any public, private or parochial, primary, elementary, or high school, or any college, university, or church, or any recreation area operated by the District of Columbia Recreation Board:

"*Provided, however,* That this subsection shall not forbid the issuance of a license for any place within such prohibited distance for which said place a license of the same class has been issued and is in effect on the date the application is filed, nor forbid the transfer of a license in the discretion of the Board from one premises within such prohibited distance to another premises within the same prohibited distance,
* * *."

SUMMARY OF ARGUMENT

Appellant was denied a fair hearing before the Board for the following reasons:

1. The evidence established that the Citizens Association of Georgetown was the motivating force behind the opposition to appellant's application for renewal of its restaurant beverage license. The evidence

further established that one of the Board members, Hon. J. Bernard Wyckoff, was a resident and property owner in the Georgetown area, and a long-standing member of such Association, had been its Secretary and a member of the Association's Executive Committee immediately prior to his appointment to the Alcoholic Beverage Control Board on August 20, 1965. On July 2, 1965, while a member and Secretary of the said Executive Committee, Mr. Wyckoff joined in the unanimous action of said Executive Committee to oppose any new applications for liquor licenses in the Georgetown area until the next regular meeting of the Association. At a regular meeting of the Association, the Association voted to support the "neighborhood movement or opposition."

In addition, after being appointed to the Board, the Association sent to Mr. Wyckoff, *ex parte* inflammatory and derogatory newsletters attacking appellant's restaurant and other licensees in Georgetown. The Association charged, *ex parte*, that the presence of appellant's place of business in Georgetown would deteriorate the value of property in Georgetown. Since Mr. Wyckoff is a property owner and resident of the Georgetown area, with interests common to those who opposed appellant before the Board, and in view of the foregoing, the refusal of the said Mr. Wyckoff to disqualify himself or the refusal of the Board to disqualify him to hear this application was a denial of a fair and impartial hearing and thereby denied appellant due process of law.

2. The Board erred in failing to consider appellant's application as one for a renewal of its existing restaurant beverage license. The legislative history of the Act under which the Board operates clearly indicates Congress' intention that renewal applications be treated differently than original applications. The said Act itself sets forth certain different considerations to be applied to renewal applications. The Board has historically considered renewal applications in the light of the equities that have become attendant to a licensee already in business and has created separate procedures to be followed upon the filing of renewal

applications. In the instant case, the Board admitted that it did not consider appellant's application as a renewal application and ignored the resulting equities that had intervened in favor of appellant. Such failure on the part of the Board denied appellant equal treatment as accorded other similar applicants.

3. The Board erred by using a protest hearing by citizens as a device for revoking appellant's beverage license for reasons not properly in issue before the Board. Without notice to appellant and opportunity to adequately defend itself, the Board used a protest hearing to raise the issue of the good moral character of appellant's officers and directors. In all previous situations of this nature, the Board had raised such issue by a "Show Cause Order" which gave the applicant notice of specific charges of improper conduct alleged to have been committed by it. In the instant case this was not done.

ARGUMENT

I.

THE BOARD ERRED IN PERMITTING APPELLEE J. BERNARD WYCKOFF TO SIT AS A MEMBER OF SUCH BOARD IN APPELLANT'S CASE

On January 25, 1966, prior to the commencement of the hearing before the Board on appellant's renewal application, appellant filed timely motion to disqualify appellee J. Bernard Wyckoff as a member of the Board to sit on appellant's case. (J.A. 129). Mr. Wyckoff had been a member of the Citizens Association of Georgetown and its predecessor association since 1922, and up until the present time. Mr. Wyckoff had been a Chairman of a committee of the Association and its elected Secretary for the period Spring, 1965, to August 20, 1965, upon the latter date of which he resigned upon being appointed to the Board. Mr. Wyckoff had also been a member of the Association's Executive Committee from Spring, 1965, to August 20, 1965. He attended Executive Committee

meetings, was aware of the policy of the Association in opposition to certain M Street restaurants in Georgetown and voted along with the Association in any position it has taken. (J.A. 137, 237).

One of the Executive Committee's meetings, attended by Mr. Wyckoff as Secretary of the Association, was that meeting held on July 2, 1965. The minutes of such meeting, signed by Mr. Wyckoff as Secretary, state in part:

"On motion of Mr. Troxal it was *unanimously* resolved by the Executive Committee that:

* * * * *

"2. Should the denial of a liquor license to Cafe Balzac, Inc. be appealed, the Citizens Association of Georgetown will request permission of court to appear as friend of the court to support the Alcoholic Control Board action in denying the license, and

"3. *The Citizens Association of Georgetown will oppose any new applications for liquor licenses in the Georgetown area if in the judgment of the President such applications should be opposed, until the next regular meeting of the Association.*" (Emphasis supplied) (J.A. 297).

It should also be noted that Mr. Wyckoff was a resident and a property owner in Georgetown (J.A. 137), and was deeply affected by any alleged deterioration of property values in that area. In this regard, it is significant that Mr. Wyckoff received, prior to the hearing on appellant's application, a News Supplement dated September 1965, published by the Association, which stated in part:

"A DOUBLE-EDGED TRAGEDY

"The decline of Georgetown because of excessive tavern activity in the M Street area is a double-edged tragedy:

"It is a decline for in-city family living.

"It is also a decline for an irreplaceable historic district in the heart of the Nation's Capital.

"The startling fact is that deterioration is permitted at the very moment President Johnson has called for new effort to bring beauty and quality to urban life. Most American cities would welcome restoration of decayed central districts into attractive family neighborhoods. Georgetown pioneered to become just such a neighborhood. And it did so by private citizen effort without the use of government funds.

"The United States Congress recognized Georgetown's accomplishment by passing, in 1950, Public Law 808, setting the boundaries of Old Georgetown, declaring it to be of 'historic interest,' and providing for the preservation of its architectural character.

"There are other instances in The United States where laws governing alcoholic beverages have encouraged commercial interests to develop a honky-tonk tavern 'strip across the river.' *But we know of none that has caused so much damage to residential quality and historic value as the 'Georgetown strip' in the Nation's Capital.*" (Emphasis supplied) (J.A. 318).

In addition to the foregoing, the Association sent other *ex parte* communications and inflammatory publications to Mr. Wyckoff, all contained in Exhibit A-3 of the record herein; representative of such publications is the following:

(a) Newsletter of the Citizens Association of Georgetown, May 19, 1965:

"ABOUT M STREET TAVERNS.

"Resolutions passed at our April meeting call for (1) alcohol being served only to teenagers issued official identification cards with parents' approval; (2) curbs on liquor licenses to taverns here; (3) more police protection in the M Street area; (4) study of bill introduced in Congress by Rep. Abraham J. Multer (D-N.Y.) to raise the drinking age to 21." (J.A. 315).

(b) News Supplement on Taverns, September 19, 1965:

"Recent liquor license policies by the District of Columbia have permitted a major portion of Historic

Georgetown to become a cheap honky-tonk tavern strip.

* * * * *

"The decline of Georgetown because of excessive tavern activity in the M Street area is a double-edged tragedy:

"It is a decline for in-city family living.

"It is also a decline for an irreplaceable historic district in the heart of the Nation's Capital."
(J.A. 316).

(c) Citizens Association Newsletter, November, 1965:

"CHEAP TAVERN STRIP ON M STREET

"Each week the cheap, honky-tonk tavern strip created by the District of Columbia Government in Georgetown's M Street area continues to draw thousands of undesirables, teenage drinkers and lawbreakers." (J.A. 320).

(d) Citizens Association of Georgetown Newsletter, December, 1965:

"MEMBERSHIP ACTION RE TAVERNS & LICENSES

"The membership at our monthly meeting on November 8 voted to oppose all new Class "C" (Restaurant) liquor licenses in Georgetown on the grounds, among others, that this area is saturated with licensed establishments . . ." (J.A. 323).

It is undisputed that Mr. Wyckoff received these communications. (J.A. 241). In addition, it is likewise undisputed that appellee Wyckoff is now, and has been, a resident and property owner in the Georgetown area and that for over 40 years past he has been a member of the Georgetown Citizens Association, and its successor, the Citizens Association of Georgetown. (J.A. 235). Prior to his appointment to the Board, said appellee knew of the continued opposition of the Association to the license of appellant and other licensees in the Georgetown area and voted along with the Association in condemnation of such establishments. (J.A. 296).

In reply to appellant's motion for disqualification said appellee filed affidavit with the Board disclaiming any prejudice in the outcome of the proceedings. (J.A. 137). Before the Board and in the court below, appellant made it quite clear that it knew appellee Wyckoff to be of high integrity and character. Appellant states that notwithstanding Mr. Wyckoff's assertions of impartiality, that the Association, of which he is a member and former Secretary and member of its Executive Committee, is the complaining witness against appellant and the very activity of the Association in urging its members to protest appellant's application disqualified Mr. Wyckoff. It should also be noted that by sitting in judgment of appellant's renewal application Mr. Wyckoff was in the position of ruling in favor of or against his friends and neighbors. Mr. Wyckoff even admitted that he had met appellee Palmer at an Association Executive Meeting. (J.A. 243).

Appellant respectfully submits that the law on this point is very clear and that it was plain error for Mr. Wyckoff to sit on the Board in view of the foregoing circumstances. The Supreme Court of the United States in *In the Matters of Lee Roy Murchison and John White*, 349 U.S. 133, 75 S. Ct. 623, 99 L. Ed. 942 (1955), at page 136, held:

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. *But our system of law has always endeavored to prevent even the probability of unfairness.* To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that 'every procedure which would offer a possible temptation to the average man as a judge * * * not to hold the balance nice, clear, and true between the State and the accused denies the latter due process of law.' *Tumey v. State of Ohio*, 273 U.S. 510, 532, 47 S. Ct. 437, 444, 71 L. Ed. 749. Such a stringent rule may sometimes bar trial by judges who have no actual bias and who would do their very best to weigh the

scales of justice equally between contending parties.
 But to perform its high function in the best way
 'justice must satisfy the appearance of justice.'
Offutt v. United States, 348 U.S. 11, 14, 75 S. Ct. 11,
 13." (Emphasis supplied).

In *Amos Treat & Co. v. Securities & Exchange Commission*, 113
 U.S. App. D.C. 100, 103 (1962), this Court held:

"At the very least, quasi-judicial proceedings entail a
 fair trial. As the Supreme Court has said in other
 contexts:

'A fair trial in a fair tribunal is a basic requirement
 of due process. Fairness of course requires an ab-
 sence of actual bias in the trial of cases. But our
 system of law has always endeavored to prevent even
 the probability of unfairness.

* * * * *

'It would be very strange if our system of law permit-
 ted a judge to act as a grand jury and then try the very
 person accused as a result of his investigations. * * *
 Having been a part of that process a judge cannot be,
 in the very nature of things, wholly disinterested in
 the conviction or acquittal of those accused * * *. Fair
 trials are too important a part of our free society to
 let prosecuting judges be trial judges of the charges
 they prefer.'" [In *re Murchison*, *supra*.]"

Amos Treat was an action by registrants to enjoin the Security &
 Exchange Commission from prosecuting a revocation proceeding on the
 ground that one of the commissioners had previously been an employee
 of the Commission's division of corporation finance while *Amos Treat*
 & Company was under investigation. This Court held at 113 U.S. App.
 D.C. 104:

"Stated otherwise with respect to agency adjudicatory
 proceedings, due process might be said to mean at
 least 'fair play.'

"One of these essentials is the resolution of contested
 questions by an impartial and disinterested tribunal.
 These adjectives are not absolute but relative as every
 thoughtful person knows. Decisions affecting human

beings, made by human beings, necessarily are colored by the sum total of the thoughts and emotions of those responsible for the decision. The judicial process, or any other human process, cannot operate in a vacuum. The most we can hope for is that persons charged with the responsibility of decisions affecting other people's lives and property will be as objective as humanly possible. Certain rules, of more or less definiteness, have been worked out through judicial decision by judges to regulate their own conduct. * * *

* * * * *

"The board argues that at worse the evidence only shows that one member of the body making the adjudication was not in a position to judge impartially. We deem this answer insufficient. Litigants are entitled to an impartial tribunal whether it consists of one man or twenty and there is no way which we know of whereby the influence of one upon the others can be quantitatively measured."

In *Jarrett v. Scrivener*, 225 F. Supp. 827 (1964), exactly as here, it appeared that *ex parte* representations had been made to the administrative agency and that the board members were subjected to various pressures. Chief Judge Pine reversed the board's findings and remanded the case for a new hearing before a new board, stating (225 F. Supp. 833):

"(4) The Board like so many other quasi-judicial tribunals which have been created in recent years, performs judicial functions within its narrow and specialized jurisdiction. *No authority would appear to be necessary to support the conclusion that in the performance of this adjudicatory function, the parties whose rights are involved are entitled to the same fairness, impartiality and independence of judgment as are expected in a court of law.* Although procedures and rules of evidence are less rigid in quasi-judicial bodies than in courts, there can be no difference, under our concept of justice, between the two tribunals in respect to these fundamental requirements." (Emphasis supplied).

In a portion of the opinion most appropriate to the question at hand, that court stated that it was not necessary to find that the board members were guilty of conscious bias and prejudice in order to deprive the plaintiffs of a fair hearing. At 225 F. Supp. 834, the court found that the contacts "did influence members of the board, or were of such a character that it may reasonably be inferred that they did impair consciously or unconsciously, their independence of judgment." The court thereupon made the following statement:

"Although the board members denied being influenced by these contacts, and indeed one testified that he attached no significance to the letter of the Secretary of State, I am not required to give full and unqualified credence to such disclaimers, but should consider them in the light of experience and take into account the frailties and infirmities of human nature."

This is of particular significance in the present case, since Mr. Wyckoff was dealing with friends, neighbors, and associations, whose displeasures he would not want to incur, consciously or unconsciously.

Selectmen of Andover v. Board of Commissioners, 86 Me. 185, 29 A. 982, is likewise of significance.

In an action involving a decision by the Board of Commissioners to locate a highway, it was disclosed that a member of the board owned land in Andover and was, therefore, not "disinterested" as required by the law. The Court said (29 A. 983):

"The requirement to be disinterested is the equivalent of not interested. Interest therefore disqualifies."

In the present case, Mr. Wyckoff owns real estate and resides in Georgetown. (J.A. 235). The Association in its *ex parte* communications urges that a granting of licenses in Georgetown (M Street) will result in the lowering of real estate values of all property in Georgetown. (J.A. 316, 318). Mr. Wyckoff's property would thereby be directly affected by his vote in this matter.

"Persons whose rights will be affected by action taken by an administrative officer or agency are entitled to have such action taken by one that is impartial, free from bias, and that has not prejudged the issues." 73 UJS. *Public Administrative Bodies and Procedure*, Section 62.

In view of the foregoing, appellant respectfully suggests that it was error for Mr. Wyckoff not to have been disqualified from sitting in judgment of appellant's application.

II.

THE LOWER COURT ERRED IN REFUSING TO ADMIT INTO EVIDENCE FINDINGS OF FACT BY THE BOARD IN OTHER CASES AND IN FAILING TO HOLD THAT THE BOARD ERRED IN APPLYING A NEW AND DIFFERENT STANDARD TO APPELLANT THAN THAT WHICH HAD BEEN IN EFFECT FOR MANY YEARS WITHOUT FIRST GIVING NOTICE TO APPELLANT

A. The Lower Court Erred in Failing to Find That the Board Considered Appellant's Application For Renewal of Its Retailer's License as if It Were an Original Application

At pages 5 and 6 of its Findings, the Board made the following statement:

"... it is the opinion of this Board that the intent of Congress, as expressed in the wording of the Alcoholic Beverage Control Act, and the interpretation of the courts, as stated particularly in *Minkoff v. Payne*, require holders of alcoholic beverage licenses to comply with all provisions of the Statute prior to each annual issuance of a new license just as fully as do original applicants for such licenses. Knowing that conditions change, especially in such a sensitive area, Congress specifically provided for annual licenses and nowhere in the Act referred to 'renewal.' Whether or not long-standing customs of cursory review or of giving preponderant weight to the equities involved in an existing enterprise may have lulled or misled some licensees into believing otherwise does not alter this statutory obligation of the Board. Therefore, the Board has heard the instant case and weighed the testimony on this basis." (Emphasis supplied) (J.A. 309).

Prior to consideration of appellant's renewal application, the Board had properly made a distinction between original applications and renewal applications for beverage licenses. An original application is an application in the first instance for a license. That license is valid for a period February 1 to January 31, such period being known as the "license year." (J.A. 250). Prior to January 31 of each year, each holder of a license from the Board must file an application for a renewal of his license, such subsequent application being known as a "renewal application."

The Board makes clear in the foregoing statement that it knowingly and intentionally departed from its long-standing custom and used a new standard on this renewal application. It is undisputed that prior notice of such change of standards was not given to appellant and, by this statement, the Board has departed from a practice which it has used since the enactment of the Act, namely, since 1934, that renewals would be issued on a routine basis provided that the applicant had not been guilty of any infraction of law.

In its Findings, the Board took the position that there was no such thing as a "renewal" and that every application should be judged "just as fully as . . . original applicants." As support for its conclusion, the Board emphasizes that nowhere in the Act did Congress refer to "renewal." But just three paragraphs later, the Board itself points out in its Finding No. 2 that Congress did make distinctions between original applications and renewal or subsequent applications. The Board made the following statement:

"(2) That this not being an original application, neither section 14(c) of the Act nor section 2-103 of the Regulations is applicable." (J.A. 310).

In fact, there are many indications of the *intended* differences between original and renewal applications. The legislative history of the Act is most revealing.

There can be found the following colloquy in the Joint Hearings by the United States Senate and House of Representatives Committees of the District of Columbia, held on January 5 and 6, 1934, at pages 44 and 45, to consider the bill which ultimately became law:

Senator King. Would any preference under the law be granted to a person who had a license and who had observed meticulously every rule and regulation incident to the granting of the license?

Mr. Bride. That would be a question for the board itself to decide. The kind of a board the Commissioners would select *would give weight, I am sure, to that.*" (Emphasis supplied).

Other evidence that Congress intended a renewal application to be treated differently than an original application is found within Section 14(b), as well as Section 14(c) of the Act and Regulation 2-103 which are specifically made inapplicable upon renewal.

The Board has always treated original and renewal applications differently. In an original application, a picture of the premises to be licensed is submitted and in a renewal application same is not required. In an original application corporate minutes are required, but are not required for a renewal application unless there are changes in the corporation. In the case of a renewal application, a different type of placard is posted on the premises than in an original application. One of such differences is that the word "renewal" is used in the renewal placard. Different application forms are used for original and renewal applications. In an original application there must be advertisement placed in a newspaper of general circulation for two weeks, but such requirement is not necessary for a renewal application. When a license is about to expire at the end of the license year, the Board advises the licensee by letter that he should file his application for renewal. In the event of an original application, licensees are interviewed and investigated by employees of the Board, which is not done in the case of a renewal application. Route sheets, financial statements and landlords' statements are

required for original applications, but are not required for renewal applications. (J.A. 252-254).

The significance of this change of standards of considering applications is that in making such a finding as above the Board barred itself from consideration of all of appellant's equities, namely, its investment of approximately \$100,000.00 (J.A. 163); the obligations of approximately \$70,000.00 which it owes (J.A. 163); the five year lease for which it has obligated itself (J.A. 305); and the bankruptcy which it faces if it were refused a renewal of its license (J.A. 163). The Board further barred itself from considering that it had itself renewed appellant's license in 1965. All of these factors are properly not considered on an original application where equities have not as yet intervened. However, in a renewal application equities have intervened and they should have been considered in this case as they have been in all other cases. Appellant further submits that its equities should have been weighed against the alleged inconvenience to the neighborhood and the residents living near a commercial and manufacturing zone. The Board admittedly did not do this. The Board refused to take into consideration the appellant's intervening equities and that it was already a license holder.

Appellant sought to introduce into evidence in the court below the Board's Findings of Fact in other cases considered by such Board, wherein the Board recognized the different standards and considerations to be applied to renewal and original applications. The Court sustained appellees' objection to the admission of such evidence. Appellant respectfully submits that the refusal of the lower court to consider previous standards set by the Board in comparison to the standards applied to appellant in the instant case was error. The said Findings of Fact are set forth in full in the Joint Appendix (J.A. 257-303), and excerpts therefrom are set out in the Argument below.

Some of the Findings of Fact that appellant sought to introduce in the lower court, wherein the Board admitted the existence of equities in

renewal applications, were the Board's Findings in the following cases:

- (1) *In re B and H Corporation*,
Application No. 5186
Dated January 29, 1959:

"Since this business has been in existence since 1957, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."
(J.A. 258).

- (2) *In re Pandora P. Gogos*
Application No. 7591
Dated January 29, 1959

"Since this business has been in existence since 1954, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."
(J.A. 261).

- (3) *In re Pandora P. Gogos*
Application No. 2492
Dated January 29, 1959

"Since this business has been in existence since 1950, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."
(J.A. 264)

- (4) *In re H and B Corporation*
Application No. 7180
Dated January 29, 1959

"Since this business has been in existence since 1954, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."
(J.A. 266)

- (5) *In re Daniel T. Long*
Application No. 3252
Dated January 27, 1959

"Since this business has been in existence since 1938, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards."
(J.A. 269).

- (6) *In re Benjamin Mendelson*
Application No. 5500
Dated January 29, 1959

"Since this business has been in existence since 1946, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards." (J.A. 271).

- (7) *In re K Street Restaurant, Inc.*
Application No. 1484
Dated January 29, 1959

"Since this business has been in existence since 1951, the applicant herein has gained substantial property rights in the premises as a licensee, by and with the approval of all previous Boards." (J.A. 277).

- (8) *Wagshal's Delicatessen & Liquors, Inc.*
Application No. 380
Dated January 21, 1960

"The applicant since receiving his license in September 1959, has invested approximately \$75,000.00 to rehabilitate the structure and by virtue of the provisions of the rental agreement has accepted a \$100.00 monthly increase in rent for the balance of the period the lease is to run or for a period of eight years." (J.A. 294).

In addition to the Board previously recognizing a different standard to be applied to renewal applications, the courts have held that a licensee holding a license is in a different position than an original applicant.

In *Churchill Tabernacle v. Federal Communications Comm.*, 81 U.S. App. D.C. 411, 414, 160 F.2d 244 (1947), this Court distinguished between a new application and a renewal by making the following statement:

"... we have often said that valuable rights and investments made in reliance on a license of the Federal Communications Commission should not be destroyed except for the most compelling reasons."

And at 81 U.S. App. D.C. 415, this Court stated:

"... in ordinary fairness, the Federal Communications Commission ... owes the duty to exhaust all possible avenues of compliance with the Congressional purpose before requiring complete destruction of the private interest."

In *Charles D. Kaier Co. v. Doran*, 42 F.2d 923, 924 (D.C. E.D. Pa. 1930), the Court stated:

"... although an administrator may well ask to be convinced that an applicant is a fit person to have a permit, after one has been granted, *and emphatically after it has been annually renewed for many years*, a finding of unfitness must be based upon conduct of the permittee since the former permits issued.

* * * * *

"If the application is for an original permit, the administrator is given broader discretion in passing upon the question of fitness. In permits of the kind before us Congress limited them to a year. There must have been a purpose in thus giving control over renewal permits to the administrator. This places renewals in an intermediary class between those which may be revoked and those granted on original applications. There need not be a judicial finding as in revocation cases, but the executive judgment of refusal must have its basis in the conduct of the permittee." (Emphasis supplied).

The *Carter* cases in this Court are leading cases on this point.

In re Carter, 85 U.S. App. D.C. 229, 177 F.2d 75 (1949), is the first *Carter* case. It appears therein that Carter was a bondsman who had filed an application to engage in the business of executing bonds. After the application was granted, the Court questioned one of his answers. The Court revoked the authorization after only a partial hearing on the ground that it would not have issued the license had it had all of the information before it. On appeal, this Court made the following statement:

"Prior to grant, many processes are available for inquiry and information. But, once granted, the license becomes a right, and due process of law must be followed to achieve deprivation. This is true even though the license is a severely qualified one, such as a radio license." (citing *National Broadcasting Co. v. F.C.C.*, 1943, 319 U.S. 239, 63 S. Ct. 1035, 87 L. Ed. 1374, and *Ashbacker Radio Co. v. F.C.C.*, 1945, 326 U.S. 327, 66 S. Ct. 148, 90 L. Ed. 108).

Thereafter, Carter's license expired and he applied for its renewal. The Court denied his application again.

On appeal (*In re Carter*, 89 U.S. App. D.C. 310, 192 F.2d 15), this Court reversed. At 89 U.S. App. D.C. 321, Judge Meiler, in a concurring opinion, made the following statement:

"A Bondsman's application for renewal is on a very different plane than is an original application, as I shall attempt to show hereinafter. If I were convinced that Carter's status as an applicant for renewal was the same as that of an original applicant, I should vote to affirm, because a mere application confers no property right, and no other federal right of an original applicant is asserted here which would be violated by a denial without a due process hearing."

At 89 U.S. App. D.C. 323, this Court makes this extremely pertinent statement:

"Consequently, we have presented to us now, for the first time, the question whether '*the same considerations govern renewal as govern original approval.*'"

"Having decided that Carter's right to do business was, during the original two-year period, a property right of which he could not be deprived without due process of law, we are now squarely confronted with the question whether that property right is extinguished when the stated term expires, with the result that renewal may be denied *ex parte*, or whether a hearing must be afforded before such denial.

"If Carter's authorization was a property right during the term, it was no less a property right as the term ended. So, the refusal to renew deprived him of property, in both practical and legal effect, just as surely as did the revocation during the term. Although the authorization was for a stated period, since it was nevertheless constitutionally protected property, he had a right to believe it would be continued so long as he did not lose the statutory qualifications the court had originally found him to possess. He established a business upon that reasonable expectation. This language used by the Supreme Court of Iowa (citing *Gilchrist v. Bierring*, 1944, 234 Iowa 899, 14 N.W. 2d 724, 732) is apropos:

"* * * Where the state confers a license to engage in a profession, trade or occupation, not inherently inimical to the public welfare, such license becomes a valuable personal right which cannot be denied or abridged in any manner except after due notice and a fair and impartial hearing before an unbiased tribunal. Were this not so, no one would be safe from oppression wherever power may be lodged, one might be easily deprived of important rights with no opportunity to defend against wrongful accusations. This would subvert the most precious rights of the citizen.

"*The state cannot, by issuing only annual licenses, ingeniously thwart these precious rights'.*" (Emphasis supplied).

And at page 324, the following statement is made:

"It is held by some courts that a license is a privilege and is in no sense a property right, even during its term. See the cases collected in 53 C.J.S., Licenses, § 2, p. 449. *This court has held otherwise with respect to a license to engage in a business.* *United States ex rel. Daly v. MacFarland*, 1907, 28 App. D.C. 552, 561. And we held in the first Carter case that a bondsman's authority is a property right during its term. *That being true, I think there is no valid distinction between revocation and refusal to renew, since the same consequences flow from both. Due process of law, being required for the one, should be and is required for the other . . .*

"The propositions set forth in this opinion, which are the basis for my conclusion that the order appealed from should be reversed, are amply supported by well-reasoned, convincing authorities. *Leakey v. Georgia Real Estate Comm.*, 1949, 80 Ga. App. 272, 55 S.E. 2d 818; *State ex rel. Biering v. Swearingen*, 1946, 237 Iowa 1031, 22 N.W. 2d 809; *Gilchrist v. Bierring*, supra; 45 Col. L. Rev. 67 (1945). Compare the following: *Churchill Tabernacle v. Federal Communications Comm.*, 1947, 81 U.S. App. D.C. 411, 160 F.2d 244; *Evangelical Lutheran Synod, etc. v. Federal Communications Comm.*, 1939, 70 App. D.C. 270, 105 F.2d 793; *Journal Co. v. Federal Radio Comm.*, 1931, 60 App. D.C. 92, 48 F.2d 461; *Chicago Fed. of Labor v. Federal Radio Comm.*, 1930, 59 App. D.C. 333, 41 F.2d 422; *Technical Radio Laboratory v. Federal Radio Comm.*, 1929, 59 App. D.C. 125, 36 F.2d 111; *Goldsmith v. Clabaugh*, 55 App. D.C. 346, 6 F.2d 94, certiorari denied 1925, 269 U.S. 554, 46 S. Ct. 18, 70 L. Ed. 408." (Emphasis supplied).

Appellees cited *Minkoff v. Payne*, 93 U.S. App. D.C. 123, 210 F.2d 689, in the lower court as supporting authority. Actually, such case supports appellant's position. In such case, Minkoff, a licensee under the Act, compromised claim of the United States that he had violated certain Federal statutes. The Board issued a rule to Minkoff requiring that he should show cause why his license should not be revoked on the ground that he was morally unfit because of the criminal violation. The District Court granted summary judgment and this Court affirmed, but stated that it was without prejudice to the Board reviewing the matter on a subsequent hearing. This Court made the following statement (93 U.S. App. D.C. 128):

"In affirming the judgment we do so without prejudice to consideration by the Board of any application for a new license which the appellant might file or have pending. The findings which led to the Board action relate to conduct which terminated more than four years ago. The moral character and fitness of the appellant are not necessarily predetermined forever by what then was found to have occurred. Though we affirm and will cause to be dissolved, when our

mandate issues, all existing stays or injunctions against the Board, we do not preclude the current exercise of its judgment with respect to appellant should it have occasion to do so."

The Board, in fact, did hold such a hearing and after hearing the equities, granted Minkoff's application.

Appellant does not challenge appellees' statement that Congress intended that these licenses be issued only for a year at a time to afford a means of continuing supervision, but Minkoff does not stand for the proposition that on a renewal application all equities should be destroyed and that a licensee who has his life savings invested in a business should be treated exactly as an applicant for a new licensee who has made only conditional commitments.

By applying a new standard to appellant's renewal application without having given notice that such new standard was to be applied, the Board has not only deprived appellant of its property without due process of law but has commenced a policy which, if allowed to stand, would result in dangerous repercussions to the public interest. From the legislative history and the long-standing practice by the Board, there has been a clear recognition of vested equities in a licensee once such licensee has commenced to engage in business on the strength of having been granted his license. Under this present policy of the Board equities would be non-existent and substantial investments placed in dire jeopardy, credit for construction and operation will be difficult to obtain, leases will not be executed for substantial terms, banks will not make loans on the strength of a beverage license, and all other commercial transactions attendant upon an established retail business would be substantially affected. The Board itself will have opened a Pandora's box and the courts will be flooded with litigation. The only rational basis upon which a business may be conducted is upon the Board's former and often declared policy, namely, that upon renewal due weight and consideration must be given to the equities which have intervened.

B. The Board Erred in Ruling That the Officers of Appellant Were Not of Good Moral Character Without First Giving Appellant Notice That Same Would Be an Issue

In its Findings of Fact the Board made the following statement:

"(3) That the principal officers of the applicant corporation do not meet the requirements of Section 14(a)1, which calls for such officers to be 'of good moral character and generally fit for the trust to be in (them) reposed.' This conclusion is drawn inescapably from the mass of evidence that the applicants misled both Captain Kennedy and the Board (the latter under oath in open hearing) as to their intentions. It is quite unnecessary for us to agree on a precise or official definition of what constitutes 'rock and roll music' when there is common understanding of its nature on the part of such diverse witnesses as police officers, a restaurateur, and a 19-year-old filling-station employee. Furthermore, the important element is not the amount of old-fashioned melodies, jazz or loud, heavily-accented, repetitious numbers played; the significant thing is that, commencing at the opening night party, at which it was hoped to make the best possible impression on invited guests, and more or less continuously thereafter, there were entertainers featuring electric guitars and drums and dancing of the type which moves young people today. The testimony is overwhelming that the stated intentions to run a high-class restaurant appealing to a middle-aged clientele and featuring roast beef and steak were not carried out even initially. Contrary to testimony given by the first of the corporation's witnesses, a public hall license was applied for less than three weeks after opening. Admission has been charged ever since the public hall license was granted, which is characteristic of places catering primarily to large numbers of patrons coming for entertainment and dancing, but hardly characteristic of a bona fide restaurant. Likewise, the advertising on radio stations aimed at youth, beginning near the opening date of the Roundtable, showed intentions other than a high-class eating establishment. The record is replete with further evidence to the effect that the applicant's principal officers clearly demonstrated bad faith in connection with the original license application. Accordingly, the majority of the Board

believes that such actions demonstrate that the applicants are not 'generally fit for the trust to be in (them) reposed', and thereby fail to meet the requirements of Section 14(a)1."

Appellant submits that the Board again departed from its long-standing policy by taking into consideration, as part of appellant's renewal application, the requirement that the principal officers of the applicant corporation be of good moral character. Certainly appellant concedes that the Board has the duty and obligation to assure itself that all licensees or principal officers of licensees are fit for the trust to be in them reposed. The argument made here is that the Board took such matters under consideration without giving appellant notice that such matters would be in issue and thereby denied the appellant the opportunity to present a full case in regard to such issues.

It is undisputed that appellant was never cited for bad conduct by the Board nor did appellant during the license year violate any Municipal laws or regulations.

Appellant attempted to elicit in the lower court evidence that in prior renewal applications heard by the Board, the Board made a specific finding in such cases — that in renewal applications the only conduct of the applicant to be considered was that conduct transpiring since the last renewal by the Board. In this regard, appellant attempted to introduce the following Findings of Fact which were excluded by the lower court. (J.A. 255). The said Findings of Fact are set out in full in the Joint Appendix and certain excerpts therefrom are set out below:

- (1) *Seabright, Inc.*
Application No. 7212
Dated January 29, 1965

"* * * The problems complained of, which result from the patronage of some of the Georgetown licensed establishments by large numbers of people, are essentially Police matters The Alcoholic Beverage Control Board is, of course, deeply concerned about the welfare of residents

as well as licensees but in this case believes that very little of the testimony relates directly to the applicant and his premises.

* * * * *

"(3) Inasmuch as the protest testimony did not offer sufficient evidence against the applicant's operation, and taking into consideration the rights attendant upon an existing license, the provisions of Section 14(a)5 of the Act are deemed to have been met." (J.A. 273).

- (2) *L & H Inc.*
Application No. 6929
Dated January 29, 1959

"(3) * * * The Board finds that the principal matters complained of by the remonstrants were Police matters and not subject to the jurisdiction of this Board." (J.A. 279).

- (3) *John Bryant Ellis*
Application No. 8633
Dated February 1, 1962

"* * * (2) That there have been no charges of any kind filed against the applicant since the license was issued to him in January 1961." (J.A. 281).

- (4) *George Koskouras*
Application No. 1410
Dated January 16, 1959

"* * * (3) That during the 1958 license year no complaints as to the conduct of the business have been filed with the Board." (J.A. 283).

- (5) *MacArthur Liquors, Inc.*
Application No. 211
Dated December 29, 1958

"* * * No evidence was presented showing, or tending to show, that the applicant licensee has violated any laws since the license was transferred to 4881 MacArthur Boulevard in 1958, nor that the licensee is otherwise an improper 'person,' within the purview of the Act." (J.A. 285).

- (6) *Albert Pearlman*
Application No. 671
Dated January 9, 1959

"* * * (2) That said licensee seeks to renew his license for the year February 1, 1959, to January 31, 1960.

* * * * *

"(4) That there have been no charges of violation of the laws by the applicant." (J.A. 287).

- (7) *Prajo, Inc.*
Application No. 8821
Dated January 27, 1965

"* * * The records of this Board do not reveal that any complaints have been received by it from other area residents or from the police respecting the licensed premises." (J.A. 289).

- (8) *Bernard Schulman*
Application No. 1419
Dated January 9, 1959

"* * * (2) That he now desires to renew his license for the year February 1, 1959, to January 31, 1960, inclusive.

"(3) That there have been no charges for violations of the law against him during the time he has had his A.B.C. license." (J.A. 293).

Appellant respectfully submits that the exclusion by the lower court of the foregoing Findings was error and that it is most material that the Court's attention be directed to the manner in which the Board has previously considered renewal applications such as the instant one.

No specific charges had been filed against appellant by the Board nor did the Board issue a rule to show cause to appellant why its license should not be revoked as had been done in previous cases where the Board felt that the licensee was not qualified to hold a beverage license. The minority opinion of the Board, set out below, sets forth the lack of any specificity of charges against appellant:

"MINORITY OPINION

"I do not agree with the Finding or Conclusion of the Majority of the Board in this matter.

"The record on file with the Alcoholic Beverage Control Board concerning 2813 M Street, N.W. shows that after hearing, the original license was granted on June 1, 1964, and finally issued on November 25, 1964. The record further discloses that on January 7, 1965, the corporation filed an application for its 1965 license (renewal) and on January 18, 1965, this license was granted *without protest* and was thereafter issued effective February 1, 1965. That no time during the past license year (or during its entire existence for that matter) has there been filed against the licensee any complaint nor has the licensee been cited for any alleged violations of the Act or Regulations to date.

"The Majority of the Board lays great stress on the fact that this (but for the exceptions within the Act itself) is an application for a new license, and as such must comply strictly with all the provisions of Section 14 of the Act, and then, refused to accept evidence by applicant in regard to the operation of the business of the licensee or indeed the fact that the operation proposed is identical to its operation during the past license year in which no complaints had been received nor any citation from the Board itself had been directed to the licensee for the so-called failures to which the Board now objects.

"The majority opinion apparently suggests that it is the duty of a licensee to control the actions of its patrons before entrance to and after exit from to the premises of the licensee and with this contention I cannot agree. *Nor can I agree to deny a license requesting renewal unless and until specific charges have been filed and hearing had in compliance with the Alcoholic Beverage Control Regulations and Act.*

"I would grant this license.

"/s/ James G. Tyson "

(Emphasis supplied)

In the court below, appellant attempted to produce testimony which would show the policy of the Board followed in prior years with regard

to making such matters an issue. Appellant attempted to elicit from the Executive Secretary of the Board an answer to the following question:

"Q. Mrs. Albert, since you have been associated with the Board, and exclusive of the present cases, has the Board had any case where an application for renewal has been denied for any reason other than the licensee's criminal record during the year or the number of his citations?" (J.A. 256).

The lower court sustained appellees' objection to such question. (J.A. 256). Counsel for appellant then made the following proffer of proof for the record:

"If Your Honor please, the plaintiff would show by this witness that the A.B.C. Board has in only two other cases in its history denied a renewal. In both of these cases, one of which was the application of Hyman J. Minkoff, which later went to the Court of Appeals as *Minkoff v. Payne*; and the second case, the 1200 Restaurant, Incorporated, application 5717, which as far as I know had no court proceedings afterwards, . . . the A.B.C. Board proceeded by way of rule to show cause, asking the applicant to show cause to the satisfaction of the Board that the licensee is capable of operating the establishment as required by law and giving to the applicant specific notice of the offenses of which the Board felt the applicant was guilty." (J.A. 256).

The full Findings of Fact in the *1200 Restaurant* case is set out in the Joint Appendix. (J.A. 301). From such Findings, it is apparent that the applicant had applied for a renewal of its Class "C" restaurant license and that subsequent to such application and prior to the hearing date before the Board, the Board issued a show cause order requiring the applicant to appear and to show cause "to the satisfaction of the Board that the Corporation is capable of operating an establishment as required by the laws."

This is the procedure by which the Board has previously considered acts of an applicant in order to determine whether the applicant was of a good moral character and fit for the trust in him to be reposed,

and it was this procedure, long-standing with the Board, that appellant attempted to elicit by the foregoing question to the Executive Secretary of the Board. Appellant respectfully submits that it was error for the lower court to sustain objection to such testimony.

In the instant case, appellant was never advised that the good moral character of the principal officers of appellant would be an issue. Appellant was never advised that it would have to defend itself on such a charge. For the first time in the Board's history, the Board used a protest from citizens on a renewal application as a means of depriving a licensee of its license and its substantial investment.

Section 14(a)(1) of the Act requires that a licensee be of good moral character and generally fit for the trust to be in him reposed. The Board made a finding that the appellant's officers and directors were of good moral character when it originally issued the license in July, 1964. (J.A. 125). It at least impliedly made the same finding when it reissued the license on the first renewal in January, 1965. It found no fault with appellant's restaurant during the whole of 1965. It issued no citation nor criticism of appellant during such period. Yet on January 29, 1966, the Board made a finding that the appellant's officers were of bad moral character and not generally fit for the trust of holding a license.

The Board claims (Finding No. 3) that "This conclusion is drawn inescapably from the mass of evidence that the applicants misled both Captain Kennedy and the Board . . . as to their intentions."

There are several fallacies in this finding. First, it is not supported by the evidence. At their original hearing in May, 1964, the applicants stated that they intended to operate a restaurant catering to middle-aged clientele and specializing in roast beef and steaks when they applied for their license. (J.A. 164). After their restaurant was in operation they testified that they were unable to continue on such basis, and at one time had \$164 in the bank. (J.A. 165). They, therefore, expanded their base of appeal and included music of a type to

attract young people. (J.A. 165). Although many of the neighbors felt that rock and roll music was being played in the premises, appellant denied that it had a "rock and roll establishment." (J.A. 166). The record contains a great deal of comment about so-called "rock and roll" music.

Appellant submits that whether or not such music was played is immaterial. The undisputed evidence is that a legitimate effort was made to attract a middle-aged clientele, and that such effort continues. The Board was always advised that some entertainment would be conducted on these premises. The Board evidently felt that the appellant should have come to it and requested permission to broaden the base of appeal of its entertainment. However, the Board does not have any such procedure nor any such jurisdiction. (J.A. 251).

In the lower court, appellant sought to elicit from the Executive Secretary of the Board information regarding whether or not there were any Board provisions for obtaining permission if a Class "C" licensee wanted to change its form of entertainment. (J.A. 251). The Executive Secretary answered in the negative. (J.A. 251). Appellant then asked whether or not the Board attempted to have the regulations changed to provide for such mechanics. (J.A. 251). Upon objection to such question, appellant proffered testimony of the Executive Secretary as follows:

"MR. BINDEMAN: Your Honor, a very substantial part of the Board's ruling in respect to the lack of moral fitness of the licensee concerned a fact with respect to a change and modification of entertainment by this licensee admittedly, Your Honor, and it said at its original application for license in June, 1964, that it would operate a restaurant to appeal to middle-aged people and have a certain kind of entertainment.

"There was a great deal of testimony, as Your Honor has recognized, from a reading of this record that had to do with so-called rock and roll, and the claim that Carber had rock and roll.

"Carber testified that while it didn't have rock and roll as such, it certainly had these electric guitars

and so forth, and they said that they tried to appeal to younger people. There was a modification of that.

"Now, it is our position, first of all as the witness has already said, that there is no procedure at the ABC Board to come to the ABC Board to ask for a change of entertainment.

"And secondly, our point is that the Board itself knew it, because the testimony will be that in the Board's letter to the Commissioners, it made exact mention not only of the fact that it had no procedure, but it also said that it would be difficult to bring any prosecution against the licensee which changed its form of entertainment, because it said, it would state that it had a change of intention.

"This is exactly what happened here, and I want to show it, and I think it is important for the Court to have consciousness on the part of the Board and an admission by the Board that exactly what we allege in our case was true. They have said so." (J.A. 251).

The Board referred to appellant's application for a public hall license less than three weeks after opening as some evidence of bad faith. But such conclusion is unwarranted and has no basis in the record. The record shows that appellant applied for a public hall license merely because it intended to charge admission on New Year's Eve and its attorney had advised that a public hall license was necessary in the event that admission fees were collected. (J.A. 181). This was not contradicted. Thereafter, it continued charging admission in order to help pay for the excessive high cost of entertainment. (J.A. 175).

The Board further makes reference to advertising on radio stations aimed at the young. But there is not a scintilla of evidence in the record as to the kind of advertising which appellant had on the radio. There were numerous innuendos and inferences by protestants' counsel, but protestants did not introduce any *evidence* as to the type advertising used.

Moreover, if appellant's license is to be revoked, same must be done in accordance with law. Specific charges must be brought against

appellant in accordance with Section 17 of the Act and Regulation 2-118. *Never before in the Board's history has the Board used the procedure which it used in this case.* In every prior case, it has either issued citations with specific charges alleged pursuant to the above sections of the Act and Regulations, or as it did in *Minkoff v. Payne, supra*, it issued a rule to licensee to show cause why the liquor license should be renewed because of information that licensee had been indicted for violation of Federal law. See *Note 7 — 93 U.S. App. D.C. 126*. In either case the licensee will have notice and specific charges to defend. Such specific charges are entirely lacking here.

Further, the Board here has charged appellant with fraud. The law is clear that where fraud is charged the person alleging a fraud must show the fraud clearly and fully and by clear and convincing evidence. In *Public Motor Service, Inc. v. Standard Oil Co. of New Jersey*, 69 App. D.C. 89, 91, 99 F.2d 124 (1938), this Court held:

"The rule is settled that in an action at law where the issue is fraud the party relying upon fraud must show that the misrepresentations asserted were made either with knowledge of their untruth or in reckless disregard of the truth.

* * * * *

"It is settled also that fraud must be shown by clear and convincing evidence — (citations omitted)."

And see *Clark v. Barlow*, 74 App. D.C. 328, 332, 122 F.2d 337 (1941), where this Court said:

"One who relies upon fraud, misrepresentation, or concealment, must sufficiently *allege* and prove it." (Emphasis supplied).

The record has no such clear and convincing evidence of fraud.

The injustice of this procedure is even more apparent since appellant had no knowledge from the Board that its status as a licensee, pursuant to Section 14(a)(1) was in question. Appellant filed its

application for renewal and same was protested by various protestants. The Board thereupon wrote a letter to licensee advising that its application had been protested. The Board never indicated to appellant that it would consider that its officers did not meet the requirements of Section 14(a)(1), in that they had suddenly lost their good moral standing. In this connection, see dissenting opinion of Board member Tyson, wherein he states:

"The record on file with the Alcoholic Beverage Control Board concerning 2813 M Street, N.W. shows that after hearing, the original license was granted on June 1, 1964, and finally issued on November 25, 1964. The record further discloses that on January 7, 1965, the corporation filed an application for its 1965 license (renewal) and on January 18, 1965, this license was granted *without protest* and was thereafter issued effective February 1, 1965. That no time during the past license year (or during its entire existence for that matter) has there been filed against the licensee any complaint nor has the licensee been cited for any alleged violations of the Act or Regulations to date.

"The Majority of the Board lays great stress on the fact that this (but for the exceptions within the Act itself) is an application for a new license, and as such must comply strictly with all the provisions of Section 14 of the Act, and then refused to accept evidence by applicant in regard to the operation of the business of the licensee or indeed the fact that the operation proposed is identical to its operation during the past license year in which no complaints had been received nor any citation from the Board itself had been directed to the licensee for the so-called failures to which the Board now objects." (J.A. 312).

Minkoff v. Payne, supra, is directly on point. In such case, as stated, the Board refused to issue a renewal license to a licensee who had been indicted for certain criminal conduct. As stated above, the Board had given him notice of its intentions to refuse to issue his renewal license on the grounds by issuing a rule to show cause. In this regard, this Court said (93 U.S. App. D.C. 123, 126):

"We have pointed out that under the statute the Board must satisfy itself that the applicant is of good moral character and generally fit for the trust to be in him reposed, § 25-115(a)(1). A decision of the Board on this question may not be arbitrary or capricious. It must be based upon substantial evidence. *Moreover, when, as in this case, the Board action amounts to a refusal to renew a license previously issued it must be based upon evidence which the applicant had full opportunity to refute.*" (Emphasis supplied).

The appellant had not been given specific charges by the Board and thus did not have full opportunity to "refute" the evidence. This attempted procedure must therefore fail.

Moreover, the complaints made about appellant's officers all relate to their alleged misdeeds in 1964. A license was issued to appellant by the Board subsequent to such alleged misdeeds. The Board made no objection to appellant's license approval in 1965, and issued such renewal license to it. None of the matters complained of have taken place in 1965. The Board is therefore estopped from going back to previous license years.

In *Charles D. Kaier Co. v. Doran*, above, the Federal District Court for Pennsylvania said:

"A finding of unfitness must be based upon conduct of the permittee since the former permits issued."

Another case directly on point is *Khoury v. Board of Liquor Control of State*, (Court of Appeals of Ohio, Franklin County), 91 N.E. 2d 634 (1948). In such case the licensee's liquor license was revoked because he had permitted lewd and indecent entertainment in his premises. However, it developed that various inspectors of the liquor board had visited the premises from time to time, had seen the type of entertainment being offered, and had made no objection to same. He was told that unless he removed certain runways upon which the performers did their act he would be cited. He did remove the runways in full compliance with the inspectors' directions.

Upon appeal, the action of the board was reversed. The Court said (81 N.E. 2d 636) that the applicant had "the right to expect that if the type of entertainment was objectionable or contrary to the policy of the Department that upon some of these visits that fact would have been made known to him." The Court further said (81 N.E. 2d 634, 637):

"A permit holder who has invested heavily in his place of business and has built up good will, although he has no vested right to retain a permit, is entitled to a policy from the Liquor Department upon which he can rely and it should at all times be fair to him."

In the present case, it is undisputed that the appellant operated its place of business without any objection from the Board and without any criticism of its operation, even though the place of business was regularly visited by inspectors of the Board in accordance with law. (J.A. 312). In fact, its 1965 renewal license was issued without protest or comment, and its 1965 operation has been free of comment from the Board or citation. (J.A. 312).

In accordance with the above decision, appellant was entitled to rely upon the Board's policy, particularly since it has "invested heavily in his place of business" and has "built up good will."

CONCLUSION

The judgment of the District Court should be reversed.

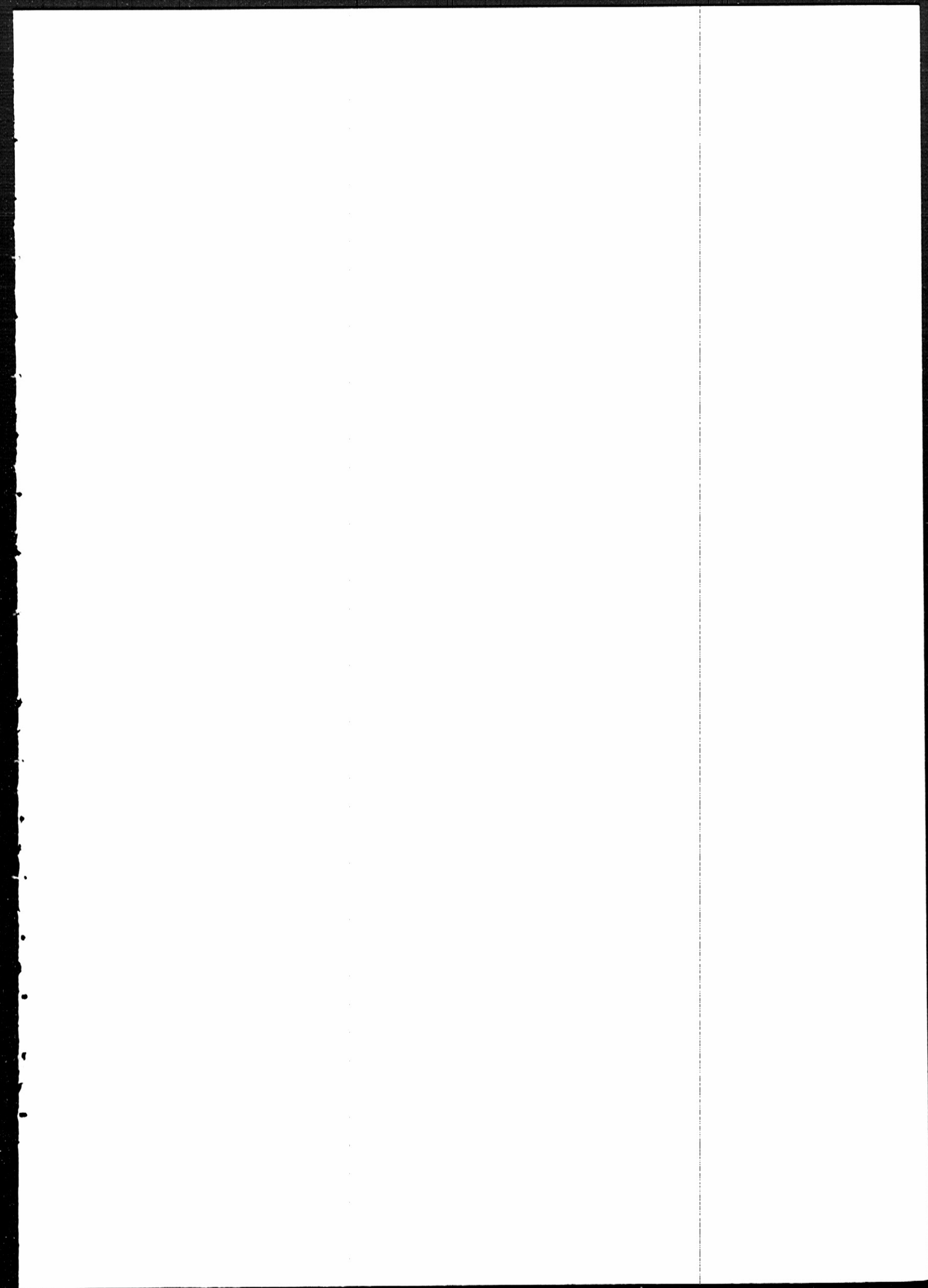
Respectfully submitted,

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BRIEF FOR APPELLEES PALMER, ET AL.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 20,196

CARBER, INC.

Appellant,

v.

JOY R. SIMONSON, et al.
Individually and Comprising
the Membership of the Alcoholic
Beverage Control Board
and
MR. AND MRS. GARDNER E. PALMER, et al.

Appellees.

Appeal from the United States District
Court for the District of Columbia

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United States Court of Appeals
for the District of Columbia Circuit

FILED SEP 30 1966

Nathan J. Paulson
CLERK

QUESTIONS PRESENTED

In the opinion of Appellee-Intervenors Palmer, et al., the questions presented are as follows:

1) Whether the activities of the Citizens Association of Georgetown, Appellee Wyckoff's affiliation with this Association and his residency in Georgetown were sufficient to require his disqualification in the proceedings involving appellant's application for liquor-license reissuance.

2) In deciding whether appellant's liquor license should be reissued, was not the Board required under the Statute to determine whether appellant's premises are still appropriate for the neighborhood in which it is located and whether the applicant's principal officers are of good moral character and generally fit for the trust to be in them reposed?

3) Whether an applicant such as appellant who has secured his original liquor license by misrepresentations as to the type of establishment he would operate is entitled to assert "equities" in his license on reissuance which would estop the Board from requiring compliance with the provisions of the Act that the premises be appropriate and which would prevent the neighborhood from seeking the protections of these provisions.

4) Was not the Board required to deny appellant's application for liquor-license reissuance on the basis of its finding that appellant's principal officers did not meet the requirement in Section 14(a)(1) of the A.B.C. Act that they be of good moral character, where the protestants put the applicant on notice prior to the hearing that the issue of appellant's misrepresentations would be raised by filing an objection to reissuance specifying this ground among others, and where there was overwhelming evidence of misrepresentations as to the type of establishment appellant intended to operate and other evidence indicating a lack of candor on their part?

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CARBER, INC.

Appellant,

v.

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Individually and Comprising
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and
MR. AND MRS. GARDNER E. PALMER, et al.

Appellees.

Appeal from the United States District
Court for the District of Columbia

BRIEF FOR APPELLEES PALMER, ET AL.

COUNTERSTATEMENT OF THE CASE

Appellee-intervenors Palmer, et al. adopt the counter-statement of the case relating to the appeal of Carber, Inc., No. 20,196, in the brief filed by the Appellees Simonson, et al. In addition, however, appellee-intervenors would like to draw certain other facts to the attention of the Court.

Appellee-intervenors constitute a group of property owners and residents in the immediate neighborhood of appellant's premises. On January 14, 1966, they filed with the Alcoholic Beverage Control Board an objection to the reissuance of Carber's liquor license (J.A. 126-128). This objection was part of the public files and was immediately available to the applicant. The objection was based upon the inappropriateness of Carber's premises to the neighborhood, under Section 14(a)(5) of the Act, and raised issues with respect to misrepresentations which had been made to the Board, the neighborhood, and the police as to the type of establishment which Carber's officers had stated that they intended to operate in connection with the issuance of the original license in the summer of 1964. The Georgetown Citizens Association (hereinafter the Association) did not protest appellant's application for its liquor-license reissuance and did not actively participate in the hearing. The Association, at a

meeting of January 10, 1966, resolved to support the residents and property owners in the vicinity of appellant's establishment in their opposition to the reissuance of appellant's 1966 liquor-license (J.A. 142). However, despite innuendo in Appellant's Brief (pp. 4, 11, 18) and cross-examination on this question (J.A. 142) there is no evidence that the Association provided any financial or other support (other than the passing of the above-referenced resolution) to the neighborhood group in its opposition to appellant's application for liquor-license reissuance (J.A. 115). A number of the members of the neighborhood group were not even members of the Association (J.A. 113-114).

There was no evidence of any contacts of any sort between the members of the protesting neighborhood group and the Board member for whom disqualification is urged. In fact, Mr. Wyckoff knew only one of the protesting neighborhood group, whom he had met on one occasion (J.A. 243). There was no evidence that Mr. Wyckoff was aware of the Association's position with respect to appellant's establishment and its liquor-license prior to the hearing. In fact, it was appellant's motion for disqualification which first informed Mr. Wyckoff of the resolution adopted by the Association as to appellant's application for liquor-license reissuance (J.A. 248). Although Mr. Wyckoff does live in Georgetown,

he does not live in the neighborhood of appellant's premises. Mr. Wyckoff lives west of Wisconsin Avenue on O Street and well outside the area affected by patrons of the Roundtable.

None of the news bulletins issued by the Association to its members named the Roundtable or referred to it in such a way that one unfamiliar with the establishment could tell that the Association objected to its operation.

The Roundtable opened on November 25, 1964, having secured its Class C liquor license after a hearing in May, 1964. The area immediately north of M Street on the east end of Georgetown was a quiet residential area prior to its opening. At the hearing and in previous discussions with the Captain of the Metropolitan Police Precinct encompassing the area, the appellant's officers categorically represented that the establishment would not be a rock and roll nightclub (J.A. 122-125, 183-184, 189-190). Yet the type of establishment which appellant operated was, from the beginning, the very type of establishment which its officers had stated they would not operate (J.A. 157, 191, 204-205, 213-214).

As mentioned above, by a formal written protest filed with the Board on January 14, 1966, the appellee-intervenors put the Roundtable on notice that they would place in issue

before the Board whether the Roundtable had in 1964 misled the police, the Board and the residents of the area as to how the Roundtable would be operated (J.A. 127-128).

There was extensive testimony before the Board as to the effect of the Roundtable's operations and its patrons upon the neighborhood. Evidence was introduced as to acts of property destruction and vandalism (J.A. 146-148, 154-155, 186, 196-197, 198, 201-202, 203, 207, 211), noise created by and objectionable conduct of Roundtable patrons bothering the neighborhood (J.A. 146-148, 154-155, 185-189, 193-197, 198, 199-201, 207-210), parking problems caused by Roundtable patrons and a general deterioration in the neighborhood as a result of all of these factors.

STATUTES AND REGULATIONS

Section 25-115(a)(1) and (5), D. C. Code, 1961.

Section 25-115.

"(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailer's license, class E, or

solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed. ***

5. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired."

SUMMARY OF ARGUMENT

Appellant received a full and fair hearing before the Board on all issues raised and the Board's findings (a) that the principal officers of appellant do not meet requirement under Section 14(a)(1) of the Act that they be of good moral character and (b) that the premises were inappropriate under the terms of Section 14(a)(5), were fully supported, if not compelled, by overwhelming evidence in the record before the Board.

The appellant was given a full and fair hearing before the Board on the question of disqualification of Mr. Wyckoff. No evidence was produced at this hearing, and none has been produced subsequently, showing any exparte contacts with the protestants. The news bulletins issued by the Georgetown Citizens Association were open expressions of the views of a civic association, did not mention appellant's establishment by name, and do not constitute exparte contacts requiring disqualification. There was no evidence of bias, and appellant's counsel specifically accepted the Board member's affidavit that he would decide the matter fairly on the record before him. There was affirmative evidence of the Board member's lack of bias in his voting to

grant several other licenses in Georgetown which had been actively protested by the Association.

The Board properly considered whether appellant's establishment met the requirements of Section 14(a)(5) of the Act and specifically stated that it was "certainly mindful of the equities on both sides" in reaching its conclusion that the premises were inappropriate (J.A. 309). However, in making this determination, the Board was not compelled to give preponderant weight to alleged "equities" of the licensee. No alleged prior practice of the Board in cursory review of liquor-license reissuance applications could estop the Board from applying the requirements of the Act to appellant, or deprive the property owners and residents of the neighborhood from the protections of the Act. Moreover, since appellant secured its original license by misrepresentations as to the type of establishment it intended to operate, it is in no position to claim "equities" or assert an estoppel against the Board and the neighborhood.

The protestants put appellant on notice prior to the hearing that the issue of its officers' misrepresentations and their consequent lack of good moral character would be raised. Appellant was prepared for this issue and put on evidence with respect to it, and thus cannot assert that it was deprived of a fair hearing on this issue.

ARGUMENT

I. There Is No Basis In Fact or In Law For the Disqualification of Mr. Wyckoff.

It should first be noted that the appellant does not even contend that the Board did not afford it a full and fair hearing on disqualification. It filed, and the Board entertained at length, a motion for disqualification, which is a matter over which the Board has primary jurisdiction. See, e.g., SEC v. R. A. Holman and Co., 116 U.S. App. D.C. 279, 323 F.2d 284, 287 (1963). The evidence introduced before the Board on this motion would not, even if considered apart from Mr. Wyckoff's affidavit (which appellant through his counsel accepted), compel disqualification. And no evidence developed in the discovery depositions before the District Court gives any reason to question the correctness of the Board's decision.

The basic thrust of appellant's argument for disqualification before the Board was that the news bulletins of the Association (which contained generalized and unfavorable references to types of establishments on M Street in Georgetown) constituted exparte contacts within the doctrine of Jarrott v. Scrivener, 225 F. Supp. 827 (D.C.D.C. 1964). Appellant's counsel before the Board specifically accepted Mr. Wyckoff's affidavit (J.A. 143),

and based his argument upon the theory that the very fact that the Association had issued these news bulletins, which came to Mr. Wyckoff as a regular member of the Association, required his disqualification (J.A. 143-144).

It is appropriate to state at the outset the factual context of appellant's sweeping argument for disqualification. There is no evidence that Mr. Wyckoff had ever been approached by members of the Association or by any other person concerning the appellant's application or its premises, or any other premises holding alcoholic beverage licenses in Georgetown. There is also no evidence that the Association was the "motivating factor and guiding force" in urging a denial of appellant's liquor-license reissuance. The protestants were an ad hoc neighborhood group attempting to maintain their residential area. Many were not even members of the Association, and Mr. Wyckoff knew only one of the protestants whom he had met on one occasion.

None of the news bulletins in question, which are alleged to be exparte contacts, mention the Roundtable. There is no evidence that any of the protestants against the Roundtable were "friends and neighbors" of Mr. Wyckoff (Appellant's Brief, p. 19) and the fact is undisputed that Mr. Wyckoff lives west of Wisconsin Avenue on the other side of Georgetown from the Roundtable,

substantially outside of the "neighborhood" as defined by the Board in its findings, and outside of the area affected by the Roundtable's patrons.

There is also affirmative evidence of Mr. Wyckoff's lack of bias in Georgetown liquor-license matters, in that he voted for the granting of liquor licenses to two establishments vigorously and actively protested by the Association, both of which are substantially closer to his residence than the Roundtable, (KGM, Inc. at the corner of Wisconsin and O Streets, N. W. and The Crazy Horse in the 3200 block of M Street, N. W.); he also voted in favor of granting a license for Mac's Pipe and Drum in the 3400 block of M Street, N. W., whose application was being vigorously protested by a neighborhood group with an expression of support from the Association.^{1/}

Thus, the essence of appellant's argument for disqualification must be that Mr. Wyckoff's affiliation with the Association prohibited him from sitting on any matter on which the Association had taken a position, even though lack of bias has been "accepted" and demonstrated, or that the receipt of the news

^{1/} The Board's findings and conclusions in these three matters were attached to Appellees' Memorandum in Support of Their Motion for Summary Judgment in the Court below. Also see J.A. 104-109.

bulletins constituted exparte contacts. Such a sweeping contention is unsupported by any authority.

Appellant's contention as to disqualification involves two elements (bias and exparte contacts) which should be examined separately. Initially, however, it is appropriate to point out that a substantial showing is required to disqualify an administrative officer. See U.S. ex rel de Lucas v. O'Rourke, 213 F.2d 759, 763 (8 Cir. 1954).

On the question of personal interest or bias, there is no evidence warranting disqualification. The mere fact that a civic association, of which the administrator is a member, has taken and expressed a position on the merits of the matter on which the administrator is called upon to rule has never been held to be adequate grounds for disqualification. There is not only no evidence that would suggest that Mr. Wyckoff's judgment was overborne by personal bias, but the Court should take notice of the fact that, in three 1966 liquor-license reissuance applications by establishments considerably closer to Mr. Wyckoff's residence than the Roundtable (where the Association also took a position opposing the applications and in two of the cases formally and vigorously protested them), Mr. Wyckoff voted to grant the applications.

There were no "communications" to the Board member from the protestants and none from the Association other than the news bulletins. It is submitted that the Association's news bulletins cannot be considered exparte contacts within the meaning of this doctrine. None of these "communications" were secret; none even mentioned appellant's premises or its 1966 application for liquor-license reissuance. All were available to the appellant in advance of the hearing, and all were simply legitimate and public expressions of a point of view by a civic association.

However, even if the doctrine of exparte contacts could be stretched to include public expressions of views of this type, the questions would remain whether the bulletins were issued to influence the Board member, whether they had a significant, rather than a trivial, effect, and whether they did in fact render the Board member incapable of rendering a fair decision on the basis of evidence of record. This Court's decision in United States v. CAB, 108 U.S. App. D.C. 220, 309 F.2d 238 (1962) demonstrates that public communications, where there is nothing "savoring of corruption or attempt to corrupt" (at p. 241), are not sufficient to require disqualification. In that case, the communications were directed to the particular matter before the Board, and were sent to the Board by the very litigants before it. When an

association, which is not actively participating in the matter before the Board, issues news bulletins containing generalized references to a civic problem in a legitimate exercise of the freedoms of speech and press, a fortiori such "communications" should not be considered "exparte contacts" requiring disqualification.

Cases cited by the appellant are not apposite. Jarrott v. Scrivener, supra, involved secret contacts by important government officials as to the specific matter before the administrative board. The other cases cited (Appellant's Brief, pp. 19-21) involve disqualification of a person previously and closely involved in a prosecutorial function in connection with the matter. In summary, there is no factual or legal basis for disqualification of Mr. Wyckoff in this matter and the Board's overruling of the motion for disqualification was fully supported by the evidence before it, the evidence subsequently developed in discovery proceedings before the District Court and the Board member's demonstrated lack of bias.

II. The Board Was Required Under the Governing Statute to Make A Determination as to Whether The Roundtable Was Appropriate For the Neighborhood in Which It Was Located.

Section 14(a)(5) of the Alcoholic Beverage Control Law of the District of Columbia (25 D.C.C. § 115(a)(5)) specifies as a requirement for the issuance of the liquor license that

"The place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood. . . ."

By imposing this as an independent requirement as to which the Board must satisfy itself before issuing a liquor license, Congress recognized that the neighborhood has a very special interest in liquor licenses and that it should have an opportunity to be heard at least annually in connection with the granting of licenses. Counsel for the appellant conceded in argument before the District Court that, in the District of Columbia, liquor licenses are issued on an annual basis, so that the Board may have continuing supervision over liquor liquor licenses (J.A. 256A-256B). The statutory language is clear that an applicant for a liquor-license reissuance must meet all the requirements of Section 14(a) of the Act before it is entitled to reissuance. This construction of the plain language of the Act is fully

supported by its legislative history^{1/} and, in the light of the decision of this Court in Minkoff v. Payne, 93 U.S. App. D.C. 123, 210 F.2d 689, 692 (1953) (which was relied on by the Board in its Findings and Conclusions on this matter), appears to be the settled law in this jurisdiction.

Appellant does not appear to contend seriously that its premises were appropriate to the neighborhood and does not contest the fact that there was substantial evidence in the record before the Board to justify its finding that the requirements of Section 14(a)(5) had not been met. Appellant's argument appears to be that the Board was prohibited from making such a finding because (a) the Board allegedly "ignored" (Appellant's Brief, p. 12) appellant's "equities" in its license in making its determination that the Roundtable premises were inappropriate to the neighborhood, (b) there was an alleged long-standing practice of the Board in giving cursory review to applications for liquor-license reissuances and of giving preponderant weight to "equities", and (c) the Board applied a "new standard" to appellant without giving it notice (Appellant's Brief, p. 38).

^{1/} See testimony of the then Corporation Counsel, Mr. McBride, before Joint House and Senate District Committee on H.R. 6181, January 5 and 6, 1934, at pp. 44-47 of the Hearings on the Original (1934) A.B.C. Act.

In considering this argument, it is appropriate to note at the start that there is no indication that the Board completely disregarded any "equities" which appellant might have had in its license. The Board's Findings and Conclusions specifically state that it was "certainly mindful of the equities on both sides as it weighs the testimony and evidence" (J.A. 309), but that it had a "statutory obligation" to "require holders of alcoholic beverage licenses to comply with all provisions of the statute prior to each annual issuance of a new license just as fully as do original applicants for such licenses" (Ibid.). Thus, appellant's complaint must be that the Board did not give such weight to alleged "equities" in the license as would override all the other evidence before the Board. Such an argument is contradicted by the legislative scheme for annual liquor-license issuance, and the clear language of the statute. Certainly the Board is entitled to some discretion in any weighing of the equities and the evidence.

The second part of appellant's argument -- that the Board is estopped from requiring an applicant for a liquor-license reissuance to demonstrate compliance with Section 14(a)(5) by reason of an alleged prior practice of cursory review and that it was surprised by a change in the Board's practice -- is equally

without merit. Even assuming arguendo that the Board had such a past practice of cursory review, the existence of such a practice could not prevent a subsequent Board from correctly applying the requirements of the Act. Appellant was put on notice that the Board was exercising its duty under the statute in accordance with this Court's Minkoff decision, (which is quite explicit on the question) by the Board's action in late December, 1965, in denying the applications for liquor-license reissuances of Kaycee and Seabright (the appellants in No. 20,194). The issue before the Court is whether the Board was correct under the statute in requiring compliance with the provisions of Section 14(a). Whether or not a "new standard" was applied to appellant, the question is whether the standard that was applied was the correct one. The statute, its legislative history and this Court's decision in the Minkoff case demonstrate that it was correct.

In addition, in the light of the overwhelming evidence as to the misrepresentations made in order to secure the original license, it is more than doubtful whether appellant had any "equities" in its license. The very fact that such misrepresentations were made as to the type of operation intended by the appellant at the Roundtable is a strong indication that appellant's principal officers knew the inappropriateness of a rock and roll

nightclub to this neighborhood. The Roundtable is and has consistently been operated in such a manner as to attract large numbers of youthful patrons. There is substantial evidence in the record that these patrons do behave in a very offensive and disturbing manner. Thus, there was substantial evidence in the record supporting the Board's conclusion that an operation such as the Roundtable was irreconcilable with the residential character of the neighborhood, and overwhelmingly opposed by the residents and property owners in the neighborhood. The contention apparently made by appellant that the Board was estopped from making its determination that the Roundtable's premises were inappropriate to the neighborhood, and that the neighborhood was powerless to invoke the protections of the Act, contravenes the clear requirements established by Congress for liquor licenses.

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III. The Board Was Required Under the Statute to Determine Whether Appellant's Principal Officers Were of Good Moral Character, and There Was Overwhelming Evidence in the Record as to Misrepresentations of Material Facts to the Board and to Others, as Well as Other Evidence of Lack of Candor.

The initial misrepresentations occurred in 1964 when the two principal officers of the appellant were seeking its original license. At that time police officers and some residents in the area were already concerned about the inappropriateness of premises along M Street (the southern border of the Georgetown residential area) used as nightclubs featuring musical entertainment and dancing catering to youths (J.A. 122-124). On the other hand the police and the residents indicated that they would not object to a reputable establishment that was operated as a fine restaurant (J.A. 123, 124).

Thus, the owners of the Roundtable knew that a material issue in securing their original license would be the type of establishment they would operate. Not surprisingly in view of how the owners did in fact operate the Roundtable, the precinct captain had heard that "it was going to be a rock and roll or jazz place and . . . was vigorously opposed . . ." (J.A. 123, 189-190). The owners assured him however "that they were strictly not going to have a low class establishment", and

were "not going to have any jazz sessions of the type we originally thought was going into this place", and the police ceased to oppose them. (Ibid.) A similar concern appears from one of the resident's questions at the hearing on the original license application (J.A. 183-184). It is clear that the appellant had in fact anticipated this line of inquiry and one of its principal officers testified on direct at the hearing that

"We intend to operate a restaurant opening at 10:00 in the morning and closing at 2:00, specializing in steak and roast beef . . . we seek a middle-aged clientele." (J.A. 122)

He also specifically and unequivocally stated that he did not intend to use the premises "as a rock and roll place". (Ibid.) That these statements of intention were material is indicated by the detailed findings made by the Board on this matter, in which they specifically quoted the assurances made by the president of appellant at the hearing and specified that the police had withdrawn their objections on receiving similar assurances (J.A. 124).

Having obtained their original license, appellant proceeded to outfit, open and operate the Roundtable from the beginning in the very manner that had initially been feared -- not as a roast beef and steak house catering to middle-aged

clientele but as a rock and roll nightclub catering to youths. The evidence is overwhelming on this issue. For instance, the Roundtable was furnished with, among other things, about 75 tables that were only 17 to 20 inches square (J.A. 160, 171, 176) and it was necessary to rearrange them by placing them together in order to serve anyone a meal (J.A. 179). No mechanical dishwasher was installed (J.A. 180). No chef was hired for the opening. One of the two principal officers claimed that the other one was to have done the cooking (J.A. 179), but he could not recall that his partner had had any experience as a chef and his partner admitted on cross-examination that he had had no experience as a chef (J.A. 182-183). Most of the meat supply was purchased at retail stores (J.A. 170-171) and the Roundtable occasionally had to purchase hot coffee at a nearby restaurant when its own patrons wanted some (J.A. 205). Efforts were made to soundproof the premises (J.A. 167) and a sound amplification system with 12 to 14 overhead speakers were installed. (Ibid.)

The Roundtable opened on November 25, 1964, with a rock and roll band (J.A. 157, 191, 204-205). Rock and roll bands and dancing were observed in December, 1964 (J.A. 213-214). One of appellant's principal officers agreed that "it is very possible we did" when asked as to radio advertising in December, 1964, of

its bands on two local radio stations appealing to teen-agers (J.A. 178, 182).

There was evidence that from the very beginning the Roundtable had charged an admission fee at the front door (J.A. 205). On December 15, 1964, the Roundtable applied for a public hall license so that it could legally charge an admission fee (J.A. 174) and such fees had been charged at least from the end of 1964 according to one of the principal officer's own testimony (J.A. 174-175).

The above-stated evidence substantially supports, even compelled, the Board's finding that the principal officers of the Roundtable misrepresented their intentions as to how they would operate the Roundtable. The captain of the 7th Precinct expressly testified that the Roundtable in actual operation was "not the kind of restaurant" that one of the principal officers had proposed and outlined to him in 1964 (J.A. 191).

It should be noted that the appellee-intervenors, protestants before the Board, by a written objection to reissuance of license filed with the Board on January 14, 1966 (more than 10 days before the commencement of the hearing) put the appellant on notice that they would place in issue before the Board whether the appellant had, in fact, in 1964 misled the

police, the Board and the residents of the area as to how the Roundtable would be operated, and whether such misrepresentations warranted denial of its license application (J.A. 127-128). This objection was in the Board's public file and was fully available to and inspected by appellant's counsel. Thus the officers of the appellant knew prior to the hearing that they would have to reconcile their mid-1964 representations with their actions in operating the Roundtable. Appellant's argument that it had had no "notice and specific charges to defend" (Appellant's Brief, p. 52) is without merit. During the presentation of appellant's case before the Board its counsel stated "Mr. Duncan [attorney for the protestants] has made a continual point of the representations made at the hearing in 1964. The record speaks for itself. We have tried to explain this." (J.A. 172) (emphasis supplied)

The defense the principal officers proffered at the hearing at length was basically that they had attempted to operate the Roundtable as they had promised, but that after 60 or 90 days of poor business, they reluctantly modified their operations to attract more youthful patrons in addition to the middle-aged persons seeking a roast beef or steak dinner, and that is why they now have what some persons would call a rock and roll

nightclub, although they vigorously denied the accuracy of that characterization (J.A. 164-166). This is the same basic explanation which Appellant's Brief serves up (pp. 48-49, 50-51). The only trouble with this story is that the trier of fact, after hearing the evidence and watching the witnesses, and with plentiful evidence contradicting it, did not believe it.

At the hearing one of the principal officers testified that appellant had decided to apply for public hall license so it could charge an admission fee 60 to 90 days after the opening (J.A. 172-174). On cross-examination he was confronted with a certified copy of the public hall license application that demonstrated that it had been filed on December 15, 1964, approximately three weeks after the opening of the Roundtable^{1/} (J.A. 174). On the next day of the hearing, the other principal officer attempted to explain, in testimony so obviously rehearsed that he answered one question before it was asked (J.A. 181), that the public hall license had been sought in order to be able to charge admission on New Year's Eve "like everyone else". The Board, observing the principal officers in their testimony, was not required to accept

^{1/} He was also confronted with the provisions in the Roundtable lease (entered in mid-1964) that authorized it to operate as a public hall (J.A. 172-173).

this belated explanation at face value, particularly in the light of the other testimony that there had been a rock and roll band on the opening night (J.A. 157, 191, 204-205) and that there had been rock and roll bands in December 1964 (J.A. 213-214). Certainly the public hall license was substantial evidence that Mr. Carter had not testified truthfully when first questioned about the timing of their alleged change of operations. It was also compelling evidence that the Roundtable had not been operated for 60 to 90 days in the manner which had been represented in mid-1964 at the hearing in connection with the original license application.

In addition, there was other evidence before the Board as to admissions by one of the principal officers of the appellant to the effect that they were running it "as a rock and roll place" (J.A. 206-207). Although this admission was denied, the Board was not required to believe the denial. After observing the witnesses and their demeanor on the stand, it was free to conclude that the statement had been made by the principal officer, that it was accurate as to how the Roundtable was being operated and that the principal officer was untruthful in his denial.

There was also other evidence bearing on the credibility of the appellant's principal officers. For instance, there

was the knifing incident. One would think that Mr. Carter would, in January, 1966, remember being knifed in a fight outside of the Roundtable, but appellant argued in support of the license application that there had never been any trouble at its premises. When first asked whether there had been a knifing in front of the Roundtable, Mr. Carter unequivocally stated "No, there was not." (J.A. 181) When inquiry was narrowed to a knifing involving him or his partner, he still denied knowledge. (Ibid.) Subsequently, the captain of the 7th Precinct testified as to the knifings (of Mr. Carter and of the Roundtable's manager, a Mr. Tate) indicating that the assailant had been in the Roundtable before it had closed (J.A. 187-188). With the truth out about the knifing, Mr. Berman, the other principal officer, lamely took the position that although the fight may have started in front of the Roundtable, the fight had moved down the street a little way before the knifing occurred, and thus did not occur "in front of" the Roundtable (J.A. 215).

With this kind of explanation in front of it, the Board was not required to accept anything its officers said.^{1/}

^{1/} To control the tide of youthful patrons, the Roundtable had two separate doors, one for entry only and one for exit only that is locked from the outside. It had apparently been designed and set up in this manner, which is further evidence as to the principal officers' intentions. Mr. Berman unequivocally testified that both could be opened from the

(continued)

Appellant, which had been put on notice by the protestants that this issue would be raised, had and exercised a full opportunity to refute the charges. The contention that the Board could consider the issue of their good moral character only through its revocation procedure is without merit. Under the statute, an applicant for a license must demonstrate that each of its principal officers is "of good moral character and generally fit for the trust to be in him reposed" as a prerequisite to securing its license. A determination by the Board of "good moral character" was impossible on the record before it, in the light of the overwhelming evidence of misrepresentations and lack of candor on the part of the principal officers of appellant. Since this was not a revocation proceeding, but instead an application for reissuance, the Board was not required to follow its revocation procedure. The fact that the Board proceeded in the past by revocation proceedings in the very few cases where "good moral character" was in issue cannot mean that it had to disregard the statutory requirement of "good moral character" in a license application proceeding. And, since appellant was put on

1/ (continued from page 26)
outside (J.A. 176-177). Later one of the protestants' witnesses testified that the exit door was locked from the outside. Counsel for the appellant objected, was overruled, and then said "I'll concede. One door is locked from the outside . . . no question about it." (J.A. 212) Thus appellant's own counsel destroyed Mr. Berman's credibility.

notice by the protestants that the issue of its misrepresentations would be raised, and made a full-dress attempt to refute the charges, it cannot complain that it did not receive a fair hearing on the issue.

Appellant's argument that the Board was estopped to consider its principal officers' misrepresentations because they took place in 1964 (that is, prior to the 1965 license year) is equally without merit (see Appellant's Brief, pp. 54-55). To put the argument in plain language, what appellant is apparently contending is that the Board's failure to uncover appellant's misrepresentations within a year insulates it forever from attack as to these representations, and conclusively establishes the "good moral character" of persons who misstated material facts under oath to the Board.

Appellant cites no authority supporting such an extreme argument^{1/} and it contravenes common sense.^{2/} Since the

^{1/} In quoting from the one case cited by appellant as support for this contention (Charles D. Kaier Co. v. Doran, 42 F.2d 923 (D.C.E.D. Pa. 1930) at p. 55 of Appellant's Brief) appellant failed to quote the full sentence of the dicta on which it relied. The full sentence reads (at 924):

"This long preamble has been indulged in to make clear that although an administrator may well ask to be convinced that an applicant is a fit person

(continued)

Board must "satisfy" itself as to the "good moral character" of each of the applicant's principal officers before issuing the license, it should be entitled to weigh all the facts bearing on this issue. Certainly, on the record before it, with

1/ (continued from page 28)

to have a permit, after one has been granted, and emphatically after it has been annually renewed for many years, a finding of unfitness must be based upon some conduct of the permittee since the former permits issued." (emphasis supplied)

See Doran v. Charles D. Kaier Co., 60 F.2d 259 (3d Cir. 1932) for later stages of this litigation, where the Court indicated that the District Court was in error. An annotation in 2 A.L.R. 2d 1239, at 1247-1248, would indicate that Pennsylvania law provides more protection for the holder of an existing license than is usually recognized in other jurisdictions and cites this case. Accordingly, even though not applicable here on the facts (because appellant's license had not been "renewed for many years"), the principle reflected in the dicta quoted may have developed out of this peculiarity in Pennsylvania law.

2/ (see page 28)

This argument is particularly harsh when considered in the light of the timing here. The Roundtable opened on November 25, 1964, and its application for a license for the 1965 license year was filed on January 7, 1965. Thus, there were approximately six weeks from opening until application for the new 1965 license, clearly an insufficient time for the neighborhood to become aware of the nature and impact of appellant's operations, as well as of its representations, and to organize a protest to the 1965 liquor-license application.

evidence not only as to the misrepresentations but also of the principal officers' lack of candor (to put it charitably) in their testimony in the hearing, the Board was justified in not being satisfied on this requirement.

In short then, the Board, in making the determination required of it by the statute and on the basis of strong evidence in the record before it, found that appellant's principal officers did not meet the prerequisite of a license that they be of good moral character. Appellant was put on notice by the protestant's formal Objection filed with the Board prior to the hearing that the issue as to their misrepresentations would be raised by the protestants at the hearing and had, and exercised, an opportunity to attempt to explain their representations. There is nothing in the statute which compels the Board to proceed by revocation proceedings in such circumstances, and appellant had a fair hearing on this issue.

IV. The District Court's Decision as to Appellant
Should Be Affirmed If the Board Was Correct on
Either of the Two Findings At Issue.

Appellant's license application was denied by the Board because it failed to meet two requirements of Section 14(a) -- that its principal officers be of good moral character, and

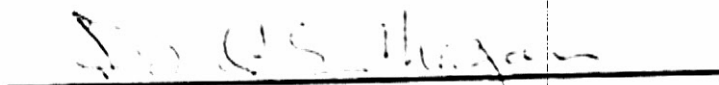
that its premises be appropriate to the neighborhood. Either ground, standing alone, was an adequate basis for the Board's denial. Appellee-intervenors submit that the Board acted correctly, on the basis of substantial evidence in the record, in making both findings. However, if the Court concludes that the Board's finding on either of these requirements was supported by substantial evidence and that the Board correctly applied the statutory standards in making this finding, the denial of appellant's license application was proper, and the District's Court's action in granting summary judgment to defendants should be affirmed.

CONCLUSION

The judgment of the District Court should be affirmed.

Respectfully submitted,


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